Studii Legalis Ratio:

OR,

DIRECTIONS

For the Study of the

LAW,

Under these Heads:

The { Qualifications for / Nature / Means / Method / Time and Place } of the Study.

510. a. 22

The second Addition, Corrected and Enlarged, by *W. Phillips*

In hoc gaudeo, aliquid discere ut doceam. Sen. Ep. *Rectum iter quod sero cognovi, & lassus errando viam aliis monstro.* Ib.

LONDON,

Printed for *Francis Kirkman*, in the Minories, without *Aldgate*, and *Thomas Dring* the Younger, at the White Lyon next *Chancery-lane* in *Fleet-street*. 1673.

MVSEVM
BRITAN
NICVM

TO THE STUDENTS OF THE Common Laws OF ENGLAND.

Books, such as are worthy the name of Books, saith the Lord Bacon, *ought to have no Patrons but Truth and Reason; I hope I may justly lay claim to both, in this Treatise. But*

De. aug. Scient.

the first having for a long time past been forced to the Rear, and Error leading the Van, had the fewest followers; the latter through Ignorance and partiality was in a manner lost: so that what was formerly limited to the Cretians, *might have been well applied to this part of the World also in these latter times, that they were* Κάρα θηρία, *Brutes, and that evil too: and I doubt there is too much of that brutishness still remaining. I thought it therefore my safest course, with his Lordships leave, to crave likewise your*

your Patronage hereof. Your Patronage, I ſay, of whom it may be ſaid in compariſon with my ſelf (Si parvis licet componere magna) as Tacitus reports Auguſtus once ſaid of Lepidus and Aſinius, Marcum Lepidum (ſaith he) dixerat capacem ſed aſpernantem, Gallum Aſinium avidum ſed Minorem. Thoſe that are able to undertake this task, deſpiſing it, and unwilling; I willing, but not able: Therefore do wiſh the ſame perſon, whoſe Abilities and Experience are anſwerable to the work (of whom Lib. 1. Annal.

we might say, as the same Augustus *said of* L. Aruntius, Quem dixerat, *saith* Tacitus, non indignum & ausurum) *would take it in hand.*

These few Observations being the Products Temporis subsecivi (*as* Cicero *calls it*) *the leaving of businesses, lying by me in loose papers, partly out of desire of profiting others, but I confess most of all out of the importunity of my Friend the Stationer, who desired a Piece of this nature, I was content to draw them into this method (if it deserves*

that name) you now have them in.

Of what importance Books of this nature are, I leave to your ſelf to judge: for I am confident, your ſelves being Judges, there is no ſmall time ſpent by Students, at their firſt entrance on this Study, in ſearching what and how to read: here they have both in ſome meaſure briefly ſhewed them, that they may have no Remora's and lets in their ways, but cheerfully proceed in their Studies. Galen *wrote a Book only to teach the method of reading his Works.*

Paulus,

Paulus, Happerus, Gribaldus, Ant, Rasa, *and others, have not been wanting in their direction for the study of the Civil Law; but of ours, except* Sir John Doddridge *and Mr.* Fulbeck, *there hath not one trod this path. The first of whom, if Death had not prevented, doubtless had produced a Piece worthy of such a learned Man: but therein he hath handled only, though indeed fully, one part of Study, to wit, the collecting of Principles and Maxims. The other, Mr.* Fulbeck, *leans too much*

upon

upon the Civil Law; and where he touches the Common, he ſhews rather the matter then method of Study: but neither wants its worth. Theſe I confeſs want much both of the matter and method of what might be done upon this ſubject; yet my willingneſs of contributing any thing to the advancement of this Science, though but a Mite, doth claim your favourable conſtruction of my pains; remembring the old ſaying--Eſt voluiſſe ſatis, and be they never ſo deſpicable, yet there is nothing of ſo little

tle

tle regard, but hath some-what of worth: for Ineſt ſua gratia parvis. *But I deſ-pair not of ſome profit hence tr thoſe that it is intended for, the* Tyrunculi *of this Study (for higher I do not aim.) From whom I hope to receive a favourable accep-tance of my labour, who have to my detriment gone ſome-what out of my own, to no other end, then to put them in their way.* Valete, & dum de veſtris ſtudiis bene meteri conor, æqui boniq hæc τὰ μίνεα conſulite.

Gr. Inne.

W. Phillips

Books printed for and ſold by Thomas Dring *Junior, at the White Lyon over againſt the Inner Temple Gate in Fleet-ſtreet.*

A General Hiſtory of *Barbados*, St. *Chriſtophers*, *Nevis*, St. *Vincents*, *Antego*, *Martinico*, *Monſerrat*, and all the reſt of the *Caribby* Iſlands, in all 28. moſt of them now in poſſeſſion of the *Engliſh*, adorned with ſeveral pieces of Sculpture, repreſenting the moſt Conſiderable rarities therein deſcribed, by *J. D.* of *K.* in fol.

Placita Latine Rediviva, a Book of Entries in 4°.

Cupid's Courtſhip, or the Hiſtory of a Marriage celebrated between the *God of Love* and *Pſyche*, in 8°.

The *Rump* Songs in 8°.

The *Engliſh* Lovers, a Romance in 8°.

The Scornfull Lady
The Elder Brother
} Plays.

Studii Legalis Ratio:

OR,

DIRECTIONS

For the

Study of the LAW.

CHAP. I.

Of the Students Qualifications.

MANY applying themselves to the Study of the Law, without due and serious consideration of the Qualifications such a Student ought to be furnished withal,

have miſſed of that *content* and *de-light* which is treaſured therein; and in ſtead thereof, have met with *trou-ble* and *vexation of ſpirit*; judging it to be *Studii, non ſui morbum*, an in-ſeparable Incident to this Study; thinking it unattainable and full of difficulty, becauſe they are not qua-lified for the ſame; according to the of *Seneca*, *Multis rebus ineſt magni-tudo, non ex natura ſua, ſed ex debili-tate noſtra*: [Many things are diffi-cult, not in themſelves, but becauſe of our weakneſs.] And certainly it can be no otherwiſe, where any un-dertake a Profeſſion *invita Minerva* (as we ſay) when both their Genius and Qualifications check them in their choice. For thoſe things de-light every man, and thoſe onely which are Ὀικεῖα τῇ φύσει, as the Philoſopher ſpeaks, ſuitably fitted and accommodated to their Genius and frame of Nature.

Ariſt. Eth. l. 10. c. 7.

That our Student therefore may find the pleaſure thereof anſwe-able to his expectation, this Study muſt be his choice upon mature deli-

eration; following *Seneca*'s advice herein, *Considerandum est utrum negotia agendis rebus, an otioso studio contemplationiq; aptior sit.* And this choice is matter of great difficulty, wherein a man carrieth himself diversly, and wherein he shall find himself hindred by divers Considerations, which draw him into divers parts, and many times hurt and hinder one another. Some herein are happier then others, who, by the goodness and felicity of Nature, have known both speedily and easily how to chuse; and by a certain good Hap, (or rather Providence) without any great Deliberation, are as it were wholly carried into that course of life which doth best befit them. Others not so fortunate, who failing *in limine*, in the very entrance, and wanting the Spirit or Industry to know themselves, and in a good hour to be re-advised how they might cunningly withdraw their Stake in the beginning of the Game, are in such sort ingaged, that they cannot without shame recal themselves from Epist.

that which they have as wilfully inconsiderately undertaken; but dure much trouble in perfist therein, and so are constrained lead a tedious and wearisome life, of di content and repentance; a which is worst of all, lose both t and labour, spend their goods, beat their brains, without any ei profit or delight; and after a l time spent therein, know not h to give a reason why they are ra for this or any other Calling, cept because their Ancestors pro sed the same, or that they were awares carried unto it: which m *Seneca* say, *Pauci sunt qui consili suaque disponunt, cæteri eorum n qui fluminibus innatant, non eunt, feruntur:* [Few advisedly dispos themselves or their own, but such as swim in rivers, do not but are carried.] Whereas e Science requires a special and p cular wit and habilities, accord to which every man ought to f his course. *Hippocrates* saith, man's wit holdeth the like prope

w th Sciences, as the earth doth
h ſe d, wh ch though of her ſelf
be f ui ful and fat, ye it behoves
uſe advitement to what ſort of
d her natural diſpoſition incli-
h; for every ſort of earth can-
withou d ſtir & on produce eve-
ort of ſeed: Anſwerable to that
he Poet,

c tellus eadem parit omnia, vitibus Ovid.
illa
venit, hæc oleis, hic bene farra
virent.

This choice being ſo difficult, that
Student may not herein miſcar-
Nec quicquam ſequi quod aſſequi
queat, he muſt make a ſtrict enquiry
o theſe two things; his Nature,
d the nature of the Study. That
nature, that is, his capacity, tem-
rature, and whatſoever he ex-
lleth in, be anſwerable to the Stu-
. *Id quemque decet quod eſt ſuum*
axime, ſic faciendum eſt, ut contra
turam univerſam nil contenda-
us, ea ſervata propriam ſequamur:

[Every man ſhould undertake the Calling which his nature lays most claim to, and attempt nothing diſſonant to the ſame, but follow the ſuggeſtions and frame of his own nature.]

The Knowledge and Qualifications requiſite in our Student, are the Waters; ſome deſcending from above, ſome ſpringing from beneath the one informed by the light of Nature, the other inſpired by Divine Revelation.

That from above, is the knowledge and *fear of God*, which the wiſeſt of men ſaith is the *beginning of wiſdome*. *Hæc ſit prima ratio, ut Ju-*
C.Catiune. *ri daturus operam, ne (quod dicitur) impingat in limine, primum omnium numinis divini auxilium precetur, & in illius gloriam ſuorum ſtudiorum finem ſeu ad ſcopum referat:* an wherewith is neceſſarily conjoyned the true Worſhip of God, that which meer Nature (as corrupt as it is) in ſome meaſure inculcates. For all the world acknowledge a Deity; and Piety ſways them ſo, that though the

un

willingly ſubmit to their Superiours; yet rather then they will be without a god, they will worſhip a ſtock or a Stone: Therefore ſaith *Cicero*, *Nulla gens neque eſt tam immanſueta, neque tam fera, quæ non, etiamſi ignoret qualem habere deceat deum, tamen habendum ſciat.* And *Seneca* ſaith, *Nulla gens adeo extra leges eſt projecta, ut non aliquos deos credat.* Whence thoſe Fictions of the Heathen Poets touching their *Elizium* and fields of happineſs, for men of honeſt and well-ordered lives; and places of torment for thoſe that do any way neglect the bonds of their Religion. Neither hath Nature wanted arguments to inforce them hereunto, as appears by the writings of the very Heathens. For as God hath made all things that are imperfect, ſubject and ſubſervient to the more perfect, as the Elements to mixt bodies, mix bodies to plants, plants to Brutes, Brutes and all things elſe to Man; therefore very Reaſon, and the order of Nature will tell us, that we ought to ſerve God, who is

Tuſc. Qu. l. 1.

perfection in the abstract. Nor is this service formal, more of custom then duty. Therefore did the *Romans* place this in the front of their Laws, as of greatest importance *AD DIVOS ADEUNTO CASTE, PIETATEM ADHIBENTO.* And the same *Cicero* saith, *Cultus deorum optimus est idemque castissimus, & sanctissimus, plenissimusque pietatis, ut eos semper plura, integra, incorrupta, & mente & voce veneremur.* And certainly this piety becomes one of this profession (if not more) as much as any other whatsoever, Justice being the end of the Law. And *Cicero* saith, *Pietas justitia quadam est adversus Deos*, [Piety is but justice toward God.] It is not onely a vertue, but the chief, saith *Aristotle*; it is the foundation of fidelity and humane society, without which the world would fal into confusion. *Pietate sublata, fides etiam, societas humani generis, & una excellentissima virtus justitia, imò omnis probitas tollitur.* This brings along with it a quiet

Cic. l. 1. de Nat. Deorum.

and

d peaceable conſcience, a mind
m and compoſed, fit to incounter
th the greateſt difficulties that in
s ſtudy he may meet withall.
The knowledge and qualifications
m below, are informed by the
ht of Nature, as either Intelle-
al, or Moral. The Intellectual are
divided into Inherent or Innate
acquired. The qualifications
ellectual and Innate are four
number, divided according to
ends whereunto they are refer-
; for man's labour is either to
vent that which is ſought or pro-
unded, or to judge that which is
vented, or to retain that which is
dged, or to deliver over that which
retained. So that they are four;
t is to ſay, the faculty of Inquiry
Invention, of Examination or
dgment, of Cuſtody or Memory,
Elocution or Tradition.

1. The faculty of Invention is ve- *Croke* 270,
requiſite in our Student; which *Peard* and
rings out of ſharpneſs of wit, and *Joanes.*
earneſs of apprehenſion. Without
is hability, none can be fit for this

Profeſſion; for a clear apprehenſion
makes the mind receive the right
and diſtinct Notion of the thing re-
preſented, as the cleanneſs of a glaſs
ſerveth for the admiſſion of a more
exact Image of the Face that look
upon it; whereas if it be ſoiled, or dim
it rendereth either none, or an imper-
fect ſhape. Without this, none of the
particular Caſes can be throughly ſif
ted, or ſufficiently ſet forth. For con
ſidering the depth of knowledge re
poſed in the Laws of this Land, and
that caſes of much conformity and
reſemblance daily happen; ſharpneſs
of Apprehenſion is neceſſary, not
onely for the underſtanding of one
but alſo upon circumſtances of mat
ter to eſpie a difference in the other
and upon any ſudden occaſion to be
able to reply to an adverſaries unex
pected Objections; to underſtand his
Clients caſe at firſt opening, the drift
of his adverſaries reaſons at the firſt
urging, and likewiſe readily to in
vent and fitly to apply his provided
arguments. If this faculty of Ap
prehenſion faileth, ſaith *Hippocrates*
all

other diligences are loſt, for it is the Inlet of knowledge. But it ought to be moderate: for too much ſharpneſs of Wit is prejudicial to Judgment and Memory: *Nihil ſapientiæ odioſius acumine nimio:* [Nothing is more dangerous to wiſdome or judgement then too much ſharpneſs of wit] for this over-ſharpneſs riſeth out of a hot and dry brain, which is of a contrary temperature to Judgement and Memory. For, ſaith one, experience ſheweth, that they that excell in Imaginations and ſharpneſs of wit, are ſick in Judgement and Memory, and held for fools and frantick perſons. And the reaſon hereof is, becauſe the great heat that ſerveth the Apprehenſion, conſumeth both the moiſture which ſerveth the Memory, and the ſubtility of the ſpirits and figures which ſhould be in that drineſs which ſerveth the Judgement; and to it is contrary, and deſtroys the other two.

The faculty of Examination or Judgement, as Sir *John Dodderidge* ſaith,

faith, is almoſt alone ſufficient to
make a ready and able Lawyer. This
ſolidity of judgment teacheth to
weigh and try the particulars appre-
hended, and to ſever for uſe the pre-
tious from the vile. For knowledg
lies in things, as Gold in Mines, or
Corn in the Straw; when by diligen
inquiry after it we have digged it u
and threſhed it out, we muſt the
bring it to the fire and fan, to gi
it us purified from droſs and levit
Hereby is our Student enabled
perceive what is true and what
falſe in every controverſie; not
be deceived or inveigled, nor to
unconſtant in opinion; well to de
ver things conceived, and well
judge of them, which is the be
part of a Lawyer. The Art of Jud
ment excels the former herein,
that is like a picture in Marb
that is engraven with difficulty, bu
laſting; the other like a writing
the Sand, apt to take, unapt to kee
ſoon hot, ſoon col. And this
culty of Judgment ſpring-th out
a cold temperature of the brai
wh

therefore *Aristotle* saith, that such inhabit hot Countries are more old and advised then those that born in cold Regions, because excessive heat of the Country fetteth and consumeth the natural heat of the brain, and so leaves it cold, whereby man becomes to be of good judgment: whereby it appeareth, that quickness of wit and soundness of judgment are two contrary powers. And though our student be defective in one of these, of necessity he must, yet let him not despair, but comfort himself with this, that as they are contrary, so no man hath ever yet excelled in both, as appears in *Aristotle* and *Theophrastus*; the one (as Sir *John Doddridge* saith) surmounting in sharpness of understanding, the other that way inferiour, yet every way comparable in sharpness of judgment. And of our own (to omit other) Sir *Anthony Brown* and *Sir James Dyer*, Knights, both having been chief in their place of justice; the one, saith the same Author, having an incomparable

parable ſharpneſs of wit, the other an irrefragable ſoundneſs of judgement; to the attaining whereof nothing conduceth more then ſlowneſs of belief, and diſtruſt; which are the ſinews of wiſdom: Nor is any thing more prejudicial to it, then precipitancy, and impatience of delay or attendance on the determination of Right Reaſon; which makes us common run away with half or a broken judgement. In which reſpect *Ariſtotle* in his *Ethicks* very elegantly compares it to a haſty ſervant, that goes away poſting without his errand. Without this faculty of judgment, though a man were furniſhed with every thing elſe, he hath no more ſufficiency to judge or plead, then the Code or Digeſt, as one ſaith, which compaſſing within them all the Laws and Rules of Reaſon, for all that, cannot write one letter.

Examen de ingeniös. c. 11.

The faculty of Retention or Memory is the receptacle of the Apprehenſion, and is one of our Student's many natural indowments, without which he is a Lawyer to day, and

and none to morrow. For he is not like to grow rich, who lays up his treasures into a bag with holes. And the Muses, are therefore said to be the daughters of *Jupiter* and *Mnemosyne*, which signifies Memory: this being indeed the ground of Experience, and Experience the mother of Arts. And as Nature hath given to the bodies of men for the furtherance of corporal strength and nutriment, a retentive power to clasp and hold fast that which preserveth it, untill a through Concoction be wrought: so proportionably is the faculty of Memory given to Reason, as a means to consolidate and inrich it. And Fluxes, as in the body, so in the mind too, are arguments and authors of weakness. What booteth it to *read much*, which is a *weariness to the flesh*? to meditate often, which is a burden to the mind? to learn daily with increase of knowledge, when he is to seek for what he hath learned, and perhaps then especially when he hath most need thereof? Without this, our Studies are but lost labour,

Arist. Metaph. l. 1.

and

and our Student will be but another *Curio*, the Orator in *Tully*, who was wont when he had proposed three things in an Oration, to forget some one or other of them, or to add a fourth. Or like *Calvisius Sabinus*, of whom *Seneca* saith, that being at vast charges in matter of learning, he was not yet able to retain fast the names of *Achilles* or *Ulysses*. Yet if our Student be not furnished with this, or hath by any accident impaired it, or that it be otherwise denied, as the same Philosopher tells us is easily, *Res est ex omnibus partibus animi maxima delicata & fragilis memoria, in quam primum senectus incurrit*: [Memory (saith he) of all the other faculties is the most nice and weak, whereof old age makes his first conquest:] Yet I should not have him practise the Art of Memory, which, saith the Lord *Bacon*, though certain it is this art may be raised to points of Ostentation prodigious, yet in use it is barren and burdensome, and little less then dangerous and destructive to natural memory.

Cicero de Oratore.

Seneca Ep. 27.

Sen. Proem ad Controversus.

memory. Nor is the repeating of a great many words, names or verſes, on once hearing, as *Seneca* could do, as he tells us, *Duo millia nomina recitata quo ordine erant dicta reddebam, & ab his qui ad audiendum præceptorem noſtrum convenerant, ſingulos verſus à ſingulis datos cum plures quam ducenti efficerentur, ab ultimo incipiens uſque ad primum recitabam:* And *Cyrus*, of whom *Xenophon* teſtifieth, that he could ſalute all the Souldiers of his Army by their names, any matter of Eſtimation, but onely of Strangeneſs without worth; neither is it dexterous to be applied to the ſerious uſe of buſineſs and occaſion. This faculty ſprings out of moiſture; for this makes the brain pliable, and the figures are eaſily imprinted: and this is evident in Children, which in their young years ſhall better con by heart, then in any other time of their life; for then doth the brain partake of greateſt moiſture: an inſtance whereof we have in *Seneca*, who ſaith, *Quæcunque apud illam* (ſpeaking

Plin. l. 7. c. 24.

Sen. præem ad controv.

(ſpeaking of memory) *aut puer aut juvenis depoſui, quaſi recentia aut modo audita ſine cunctatione profert: At ſiquaillii inter proximos annos commiſi, ſic perdidit & amiſit, ut etiam ſi ſæpius ingerantur, toties tanquam nova audiam.* [Whatſoever I have laid up in my memory when I was a child, or a young man, it produceth without delay, as if they were newly or lately heard: But what I have committed thereto within theſe later years, it hath ſo loſt them, that though I heard them never ſo often, I ſtill hear them as new matters.] Therefore in choice of perſons for this Study, we ſhould do as Architects do in choice of fit Timber for building. They chuſe firſt the ſtraiteſt, and that which hath feweſt knots and flaws in it; which in the mind anſwereth to clearneſs and evenneſs of apprehenſion: for a clear mind, like ſtrait and ſmooth Timber, will work eaſieſt. Next, they take the heart, and ſtrongeſt ſubſtance, (and cut out the ſap) becauſe that is ſtrongeſt, and beſt able to bear weight,

weight: and this anſwers to maturity and ſoundneſs of judgement. Laſtly, they uſe no Sallow, Willow or Birch, and ſuch as are quickly apt to putrifie and wear away, but ſuch Timber as is laſting, and retentive of his nature, Oak and Elm; and this anſwereth to the memory.

Elocution, or a prompt and ready delivery of the matter conceived, is another of our Student's natural Indowments. And Eloquence, ſaith *Cicero*, is a judicious fitting of choice words, apt and grave ſentences, unto matter well diſpoſed, the ſame being uttered with Manly moderation of the Voyce, Countenance and Geſture, *&c.* A matter of no ſmall conſequence, being that whereby *Cæſar* with few words quieted the Commotion of an Army! And *Pericles* and *Piſiſtratus*, even when they ſpeak againſt the peoples Liberty, over-ruled them by their Eloquence to believe and embrace what they ſpeak; and by their Tongue effected that which their Sword could hardly have effected. He muſt have

Cic. in prol. Rhetor.

Suet. in *Cæſar*, c. 73.

a del very full of dignity, without affectation, agreeable to the matter in hand, and ſet forth with gravity. *Vereo circa floſculos captare turpe eſt*: the matter is to be minded more then the words; yet are not the words to be neglected on the one ſide, nor affected on the other ſide: *Sint verba electa, non captata*; for the nicety of words breaks the weight of an Argument; and therefore he is worthily called, *Hominem delirum qui verborum minutiis rerum frangit pondera.* Above all, he muſt have a care that the words be ſutable to the matter in hand: *Res non verba componere, & animis dicere non auribus tantum*: if the matter be good and well ordered, he ſhall not want words: according to that of the Poet,

A. Gellius.

Horat. de art. poet.

Rem bene diſpoſitam vel verba invita ſequuntur.

And it will be no ſmall advantage (being indeed good policy and diſcretion) for him to have his Speeches compoſed and premeditated:

Cujus

Cujus oratio ſicut vita debet eſſe compoſita. And to truſt to inven ion and memory is no part of prudence; ſo thoſe that h zard theſe, are with the leaſt commotion put to a *non-plus*. Though it is reported of *Severus Caſſius*, that he ſpake beſt *ex tempore*, and w thout meditation; and that he was more beholding to Fortune then D ligence; and to be interrupted in his ſpeech redounded to his profit; and then his adverſaries feared to urge him, leſt his ſudden anger redoubled his eloquence. But he is but one, and *one Swallow* (as we commonly ſay) *doth not make a Summer*. And our Student is herein to avoid over-much boldneſs and confidence, nothing adorning it more then an humble ſubmiſſion of matter of doubt, even then when by Argument or Proof it is moſt fully cleared. The Philoſophers rule is, *Sit oratio preſſa, non audax*: if it be weighty, it will pinch of it ſelf, without any confident application or aſſertion. Seneca. Val.Max. Sen.

And herein he muſt likewiſe avoid all

all paſſion, and ſhew there of; for that puts all into confuſion. *Iracundi hominis iracunda eſt oratio, & commoni nimis incitata.* This paſſionate kind of ſpeaking hath three bad effects: 1. It diſcompoſeth the Speaker, being often at a loſs of the matter he intended to utter. 2. It taketh away much of the force and weight of the ſame, the ſpeech being as it were put out of joynt; eſpecially if it were by way of Argument and Proof, one part depending upon another. 3. It taketh away the grace of the delivery. Therefore muſt his ſpeech be mildly and pleaſantly delivered, paſſing by all occaſions of anger if any be given; and then ſhall he have *verba aptè contexta, & oratio leniter fluens.* And that our Student may think this worth his while, let him hear *Seneca*, who ſaith, *Eſt decor proprius orationi leniter lapſæ*; and ſaith *Ariſtotle*, *Magnæ ſunt vires nitidæ ornatæq; orationis.* His words muſt not crowd one another in the delivery, but flow ſmoothly and ſoftly. *Hoc ego in viro*

Rhet. l. 3. c. 1.

ſapi-

ſapienti recipio, non exigo, ut oratio ejus ſine impedimento exeat, proferatur tamen malo quam profluat. Summa ſummarum hæc erit, tardiloquum te eſſe jubeo. [This I accept of, but do not require in a wiſe man, that his ſpeech flow without impediment, but his words ſhould be rather drawn then run from him. In ſhort, I would have thee be ſlow of ſpeech.] Sen.

To ſpeak well, and much, is not the work of one man; for they that abound in words, are barren in good ſpeech: like Trees that are full of Leaves, but yield little Fruit. Great Speakers are like Waters and Veſſels, which, the ſhallower and emptier they are, do make the louder noiſe; and the ignorance and confidence of ſuch Speakers is uſually diſcovered in their vain and empty Tautologies; which is the reaſon, as the Oratour obſerves, why they are uſually more copious then far learneder men, *Quia doctis eſt electio & modus*, becauſe able Speakers uſe choice, and judgement in what they produce. And fluent utterance Quint. Rhet. l. 2. c. 5.

can-

cannot find place in men of great knowledge: an instance whereof we have in *Socrates*, *Plato*, *Aristotle*, and others, who though of great knowledge, yet had not the gift of Eloquence, their words having but a slender ornament, and themselves a simple manner of delivery. Whereas on the other side there is nothing solid, their speeches most commonly being like Spiders webs, curious but thin; and the sudden flashes such use to adorn themselves withall, are like rotten wood in the dark, of more shine then substance, whose use and ornament are like themselves, swift and vanishing, at once both admired and forgotten. His care is likewise that his speech be gentle and pleasing, not crabbed, harsh and envious; and therefore acute and subtil Questions are to be avoided, as likewise constrained Allegories, Allusions and Similitudes; for these resemble Crab-fishes, where there is more picking work then meat to eat, and their ends are commonly brawls and contentions.

In

In a word, *Animi & ingenii celeres eſſe debent, qui ad excogitandum acuti, ad explicandum ornandumq; ſint uberes, & ad memoriam firmi & diuturni.* Yet if herein our Student be defective, let him not deſpair; for Sir *John Dodderidge* ſaith, I know no cauſe why we may not ſay the ſame of our Lawyer, which he (meaning *Cicero*) ſaith of the Philoſopher, *Philoſophum ſi afferat eloquentiam, non eſſe aſpernendum; ſi non habeat, non eſſe ab eo flagitandum, dum tamen complectatur verbis quod vult, & dicat plane ut intelligatur.* [If a Philoſopher be eloquent, we ought not to deſpiſe him; if he be not, he muſt not affect it; ſo that he can comprehend in words what he conceives, and ſpeak them plainly, that he may be underſtood.] And ſome defective herein, have notwithſtanding attained to no little Eminence in their Profeſſion: witneſs Sir *Thomas Hetley*, who in his Reports ſpeaking of Sergeant *Athow*, gives him this *Encomium*, That he was a man ſomewhat defective in Memory and

elocution, but of profound judgment, and great skill in pleading.

The next are the Qualifications Intellectual and Acquisite, wherewith our Student ought to be adorned, and of those, first, Learning in general is a necessary ornament, (if I may so say) though I confess the objections that have been made against it, *multum habent ponderis*; to instance a few, as, 1. That some men have been eminent herein, yet furnished with no other learning then what their natural parts afforded. And, 2. That Law is the Science of Sciences, *Lex non est tantum scientia, sed scientificissima*, saith *Plato*, and consequently comprehends all other Sciences, at least as far as they are requisite, and those need not be fetched elsewhere.

——*Non te quæsiveris extra.*

And as Sir *Henry Finch* saith, the sparks of all Sciences in the world are raked up in ashes of the Law.

And,

And, 3. That the Law is *multorum annorum opus* [a Study that requires no ſhort time for perfection] and conſeq ently there is no ſpare time for other Sciences. But as on the one ſide, I grant it no matter of neceſſity, yet on the other ſide it is a matter of ornament, and conduces much to the underſtanding of the Reaſons of the Law. For though ſome have been excellent herein, without the help of other Sciences, in regard of their great natural gifts, yet it doth not follow that all may arrive that eminency, if ſhort of their natural indowments; knowledge of other Sciences being as a guide to lead him to perfection in this. And it is probable thoſe eminent perſons might have been much more excellent, if they had been aſſiſted with the helps of other Learning; the want whereof gave occaſion to ſome, as Sir *John Dodderidge* ſaith, to call them *Doctum quoddam genus indoctorum hominum.* And although the Law doth comprehend other Sciences, yet are they

borrowed, not Inherent or inbred in the Laws, and therefore moſt fit to be ſought, and better underſtood in their proper choice: *Dulcius ex ipſo fonte bibuntur aquæ.* And although the Journey be long, and the Time ſhort, (*Ars longa, vita brevis*) as *Seneca* ſaith; yet the Maximes that the Law hath borrowed from other Learning, when they are viewed in their proper Sphear, are beſt underſtood, both for Nature and Extenſion, and eaſieſt apprehended; and ſo make ſome amends for the time that is beſtowed in inquiring into them. And this Science being written in three Languages, to wit, Latine, French and Engliſh, as Sir *John Forteſcue* tells us, *Leges terræ illius* (ſpeaking of England) *Triplici lingua addiſcantur, videlicet, Anglicana, Gallica, & Latina.* The knowledge of the Latine tongue is very requiſite in our Student, without which he cannot underſtand many Old Statutes and Ancient poſitive Laws, which were written in that Tongue; as the Statutes of *Magna*

Fort de Com. leg. Ang. p. 110. 2.

Magna Charta, *Weſtminſter* the ſecond, and many other; as likewiſe the ancient Writers, *viz. Glanvil*, *Bracton*, *Fleta*, *Hengham*, *Forteſcue*, and others, and likewiſe all Writs and Pleadings. The like may be ſaid of the French Tongue, wherein all the Annals and Year-books, and indeed the moſt part of the Law is written; a Language obtruded on us by the Conqueſt; wherein the Lawyers were wont to Plead, till by the force of the Statute of 36 *E.* 3. *c.* 15. that Cuſtom was reſtrained: and the Exerciſes of our Students at the Inns of Court are performed in this Tongue, and moſt of the Terms of this Science taken out of this Tongue; and indeed, cannot be ſo properly expreſſed in any other Language whatever.

The next that our Student ought to be furniſhed withall, is the Art of Grammar, whereof the Lord *Bacon* ſaith, that as man hath ſtriven againſt the firſt general Curſe, by the invention of all other Arts; ſo hath he ſought to come forth of the ſecond

general curſe, which was the confuſion of Tongues, by the art of Grammar. Hereby is our Student taught Orthography and Etymologie. The firſt is a matter of great conſequence, witneſs the miſchief the want thereof produceth. A *Scire facias* abated, for that the Writ was *ex inſinatione*, being no Latin word; whereas it ſhould have been *ex inſinuatione*. So a *Precipe quod reddat* abated, becauſe *Hæri* for *Hæredi*. The like in a Writ of Waſt, becauſe *ad deſtrictionem* for *ad deſtructionem*: and an Indictment quaſhed, for having *Burgaliter* for *Burglariter*, being though no Latin, yet a word of Art. The ſecond is very neceſſary, not onely to the affording of Arguments of great weight, but alſo gives much light and delight in the apprehenſion of the terms and words of Art: *Dicebatur finis* (ſaith *Littleton*) *quia finem litibus imponit*: And the Lord *Cook* upon him adds, After the example of *Littleton*, it is good to ſearch out the Etymology and true derivation of words: for

24 E. 3. 7.

Coke Rep. 13 H. 4. 10. T. N. B. 46. 6.

Igno-

Ignoratis terminis, ignoratur & ars: and this in his Commentary on *Littleton* hath he put in practiſe, as appears in his Etimologie of *Vicecomes, quia vicem Comitis ſupplet*; Sheriff, of Shire-Reeve, *prefectus Comitatus*; *Baſtardus, à Graco verbo* βάσκω, *meretrix, fol.* 16. *a. Admiral*, from the *Saxon*, *Aen mereal*, over all the Sea, 260. *b. Pyrate*, from the word πειράτης, Rover at Sea, 391. as likewiſe *Alien Leigeance*, 129. *a. Burgage*, 108. *b. conformation*, 295. *b. Count*, 17. *a. Dean*, 95. *a. Diſparagement*, 80 *a. Homage*, 64. *Heir*, 7. *b. Marſhal* 74. *Eſcheat*, 13. *a. Prerogative*, 90. *b. vid.* 61. *a.* 18. *b.* 1. *a.* 322. *b.* 226. *a.* 116. *a.* 168. *b.* 205. *a.* And many more, which for brevity ſake I omit.

The next in order is Rhetorick, which is without doubt a great ornament, and as Maſter *Fulbeck* ſaith, a pleaſant thing, and full of delight. But to dwell too much upon it, in Profeſſors of Gravity, is neither comely nor commendable, being indeed below their profeſſion, their

Study being for the general good, and commodious Government of the Commonweal. And if any man reprove these Professors, for want of sharpness of Invention, and fineſs of Wit; let him be well advised, and consider the substance of their Works, and he shall find that they carried *Mercury* in their Brain, and not on their Tongue; and that they wanted not Wisdom, though they were defective in Rhetorick. But this bordering upon the next, as *Aristotle* saith, *Ars quam Rhetoriam vocamus ad dialecticam refertur, seu sobolem ejus, & tanquam membrum quoddam adnascens*; we proceed thereto, and that is

Rhet. l. 1. c. 3.

The Art of Logick, which is a necessary Qualification in our Student, notwithstanding the cavils of some, that we are Logicians by Nature, and that there is no use of Syllogistical Arguments in Law. In respect whereof, well hath one said, *Quod nulla scientia absque dialectica ratione comparari potest.* For it is an Art that defineth and openeth the Nature of Things, divideth the Whole

Cicer Tuscul. Quest.

Whole into Parts, ſheweth the coherence and deſpendence of Things, judgeth of Truth and Falſhood. *Ex qua*, ſaith *Cicero*, *cum ſumma utilitate exiſtit ad res ponderandas; tum maxime ingenua delectatio & digna ſapientia.* Nor do we want teſtimonies of our own herein. For the Lord *Bacon* tells us, that it is a Science excellent, the end whereof is to teach a form of Argument, and to ſecure Reaſon: and the Lord *Cook* ſpeaking of that famous Lawyer *Littleton*, amongſt other things ſaith, that he was learned alſo in that Art which is neceſſary to a compleat Lawyer, I mean Logick. And likewiſe Juſtice *Dodderidge*, who hath diſcourſed at large hereof, ſaith, This Art teacheth our Student to collect the Axiomes, Grounds and Rules obſerved in that Art which he Studieth; and being ſo collected, fitly to diſpoſe thereof, which yieldeth diverſity of Matter, and ready Furniture for diſpute. And likewiſe it teacheth him in his Arguments to demonſtrate and ſtrengthen his Opi-

Cabein's caſe. Coke l. 7. 24. 6. l. 10. 31. Shelley's caſe.

nion, in defining the thing disputed of, to divide the same into parts, and distinguish the divers significations of the words, as also to search the difference of Matters and Cases proposed. *Littleton* maketh use of this about the word *Assize*, affirming it to be *verbum aquivocum aquivocans*: and thus *Assize jurata* is *aquivocum aquivocatum*, &c. So doth he likewise through his whole Book of Terms, as appears by his many Syllogisms, Inductions and other Arguments, and his Definitions, Descriptions, Divisions, Etymologies, Derivatives, Significations, and the like. Hereby likewise is our Student inabled to resolve his Arguments into better form, and to make them thereby the more convincing; and how to apply those Authorities that are not directly in the point, but by inference. But our Student must not dwell too much upon Logick, nor tamper therewith, striving to bring the Law into a true Logical method, which is impossible, or at least not without great difficulty;

and

and when done, hardly worth the time loſt thereby: witneſs *Seneca*, who told his *Lucilius*, *Non vaco ad iſtas ineptias*, [I have no time to ſpare for ſuch niceties.] Whereof, ſaith Maſter *Fulbeck*, ſome do ſpend a whole Decade of hours in doing nothing elſe, then ſeeking out the proper genus and difference of one onely thing, and when they have done, they are ſcarce ſo wiſe as they were before, but may ſay of themſelves as *Gentilis* ſpeaketh of them very fitly, *Confidentia aſtraptimus, ruimus in precipitia.* Logick is therefore requiſite to the ſtudy of the Law, yet not ſo as to tie every thing thereto, Logick being ever more given to form and words, then matter & ſubſtance; which ſome good Scholars infected withall, make none of the beſt Lawyers; *circa floſculos occupati*, [dwelling upon flouriſhes.] Our Student ſhall do well to follow the Authors advice (I mean *Seneca*) herein, *Proſpicienda iſta ſed proſpicienda tantum, & à limine ſalutanda; Hactenus utilia animum ſi præparant, non detinent;* Abberir. Gentil. l. 4. de Jur. Interpretat.

tandiu

tamdiu enim iſtis immorandum eſt, quam diu nihil animus agere majus poteſt, rudimenta ſunt noſtra non opera. [These Things are to be looked into, and no more, and ſaluted at the Entry; They are thus far Profitable, if they prepare, not detain the Mind; for we ought not to make our abode with them any longer, then we are fit for greater Things: they are our Rudiments, not our Works.] And though our Student be not skilled herein, yet if he be ſeen in Rhetorick, that will ſupply this defect; for Logick differeth from Rhetorick onely, as the Fiſt from the Palm; the one cloſe, the other at large. And the difference is good which is made between Orators and Sophiſters, that the one is as the Grey-hound, which hath his advantage in the Race; the other as the Hare, which hath her advantage in the Turn. So as it is the advantage of the weaker Creature. And if our Student want both, yet let him not deſpair, but *Studere toto animo*, as *Seneca* calls it, for the Law is no other then Reaſon; and

and if our Student have but a good ſtock of this, let him improve it to the utmoſt; and he will in a ſhort time prove a true Logician; for Logick is but Reaſon in an Artificial Dreſs. Therefore ſaid *Ariſtotle*, *Homines à natura Dialecticos & Rhetoricos eſſe.* [That men are Logicians and Rhetoricians by Nature.] And Maſter *Fulbeck* after a diligent inquiry tells us, that this Artificial (or if you pleaſe) Art of Logick is not neceſſary to a Lawyer; Nature it ſelf informing him ſufficiently herein: eſpecially the Arguments of this Profeſſion being not tied to Artificial Concluſions, but is to be left to them, *Qui nodum in ſcirpo quærunt*, [Seek a Knot in a Bulruſh] fight with their Shadows. Neither is an exact knowledge of the Art requiſite in a Lawyer; it is ſufficient if he have ſo much as will ſerve his own Profeſſion; for ſaith one, *Neq; tamen exactam adeo omnium diſciplinarum notitiam à perfecto juris profeſſore petimus, ſatis eſt eum eſſe ejus de qua ſermo fuerit non inſcium.* C. Cautiune de ſtudio juris.

Of

Of the Moral Qualifications requisite in our Student, the first is Gravity; this of all other best becoming him, to whose Profession Gravity it self lays claim: and hereby ought he to order both his Gesture and Habit. Of the first there ariseth no small advantage, this orders the wisdom of conversation, which as it ought not to be over much affected, so much less ought it to be despised; for it hath not onely an honour and respect in it self, but an influence also into business; therefore said the Poet,

Ovid. ——*Nec vultu destrue verba tua.*

And as many hereby destroy the force of their words, so likewise may it be done of their deeds, saith *Cicero*, recommending to his Brother affability and easie access. *Nil interest habere ostium apertum & vultum clausum.* So *Atticus* before the first interview between *Cæsar* and *Cicero*, the War depending, did seriously advise *Cicero* touching the composing

ſing and ordering of his countenance and geſture. For as the tongue ſpeaketh to the ear, ſo the geſture ſpeaketh to the eye; and therefore many ſubtil perſons, whoſe eyes do dwell upon the faces and faſhions of men, do well know the advantage of this obſervation, being indeed the moſt part of their abilities: neither can it be denied but that it is a great diſcoverer of the affections, and a great direction of buſineſs: for as the humours and effects of the body do alter or work upon the mind, ſo the paſſions of the mind do alter and work upon the body. The outward behaviour, and the private and ſubtil motions and labour of the countenance, ſaith *Cicero*, is *animi janua*; [the gate of the mind.] None more cloſe then *Tiberius*, and yet *Tacitus* ſaith of *Gallus*, *Etenim vultu offenſionem conjectaverat*; that anger that he miſled in his ſpeech, he found in his looks.

The ſum of behaviour is to retain a man's own dignity, without intruding

ding upon the Liberty of others. But if Behavior and outward Carriage be intended too much, it passeth into Affectation; and then, *Quid deformius quam scænam in vitam transferre!* [To act a man's life;] and although perhaps it proceedeth not into that extreme, yet it consumeth time, and takes up more room in the mind then conveniently it might. And certainly, the intending of the discretion of Behaviour, is a great Thief of Meditation; neither is there a greater impediment of Action then an over-curious observance of Decency, and the Guide of Decency, which is Time and Season; and such as are accomplished in that humour of Urbanity, please themselves in the name, & seldom aspire to higher virtue; whereas those that are defective herein, do seek comelines by reputation. His Habit likewise ought to be decent and neat, not gay and apish: nor may he spend any part of that time allotted for study, in a curious and antick Dress, which after all the pains bestowed, doth not be-

become a man. *Non eſt ornamentum virile*, ſaith *Seneca*: but this ought to be left as peculiar to thoſe weaker Veſſels, Women, to dwell and be wholly intent upon the out-ſide; in which reſpect I believe *Plato* thanked God that he was not made a Woman. *Moribundus* Plato *naturæ gratias egit quod mas fuit non fœmina.* Neither is it onely an effeminate part, but is likewiſe a ſure ſign that they are frothy and empty, and accordingly reſolved to put a good face upon the matter, and Peacock-like, to place their worth and excellency in their out-ſide, of whom the ſame *Seneca* ſaith, *Noſti complures juvenes, veſti & coma nitidos, de capſula totas, nihil ab illis ſperaveris forte, nihil ſolidum.* And as on the one ſide this is to be avoided, for we have a Philoſophers warrant, *Licet ſapere ſine pompa*; ſo on the other ſide, Decency and Neatneſs is not to be neglected, being that pre-eminence which Nature hath beſtowed on us: *Mundæ veſtis electio appetenda eſt homini. Natura enim homo nitidum & elegans*

gans animal eſt. To conclude, Behaviour is as it were the garment of the mind, and it ought to have the conditions of a garment, for it ought to be made in fashion, it ought not to be too curious, it ought o be ſhaped ſo as to ſet forth any good making of the mind, and hide any deformity; and above all, it ought not to be too ſtrait or reſtrained for exerciſe or motion. In a word, *Sit modeſtus inceſſus & compoſitus, ac probus vultus, & conveniens prudenti viro geſtus:* [Let the gate be modeſt and compoſed, (for ſaith the Poet, *Eſt & in inceſſu pars non temnenda decoris*) the countenance honeſt and chearful, and the carriage that which becomes a diſcreet and prudent man.]

The next is Temperance, as it is generally taken for a moderate and ſweet temper in all things. It is not onely a Vertue, but a ſeaſoning Sauce of all the reſt. This curbs the inſatiable deſire of worldly things, and keeps him from the unquiet and careful pleaſure of covetouſneſs

touſneſs and ambition, it will free him from the tormenting condition of thoſe, *Quos divitiæ per ſummum acquiſite ſudorem male habent, quos honores nulla non arte at q; opere petiti diſcruciant:* [Whom wealth gotten by the ſweat of their brows will not ſuffer to reſt, and whom honour attained unto by right and wrong do diſquiet.] And herewith, as an inſeparable companion, is always joyned that neceſſary ornament of a Lawyer, to wit, Patience: *Virtus contumeliarum & omnis adverſitatis impetus æquanimiter portans*; paſſing by all affronts and offences whatſoever: the want whereof is no ſmall diſadvantage. For impatience is as a Rack that urgeth men to confeſs their ſecrets, carrying them indeed beyond themſelves, *Vino tortus & ira.* —— *Tiberius* himſelf, who though a cloſe man, and of reſerved paſſions, yet being ſtinged and incenſed by *Agrippina*, he came a ſtep forth of his diſſimulation, and this paſſion quite altered his nature, *Et veram occulti pectoris vocem elicuit.* Tacitus Annal. l. 1.

Nam

Nam ideo lædere tur quia non regnaret? He brake forth into words ſtrange and unuſual from ſo cloſe a Diſpoſition, to wit, Whether ſhe were wronged becauſe ſhe did not reign, as *Tacitus* obſerves. There is not any paſſion that ſtandeth more in need of moderation then this doth, both becauſe it is one of the frequenteſt that we are troubled with, and the moſt unruly, as that which doth bear a ſway over the reſt, and of all other hath the leaſt recourſe to Reaſon: and hence is it, that the moſt ignorant are moſt affected with this paſſion, *Οἱ λογισμῷ ἐλάχιστα χρώμενοι θυμῷ πλεῖστα ἐις ὀργὴν καθίστανται.* Thoſe that make the leaſt uſe of Reaſon, are moſt carried away with this paſſion. And it doth not only prejudice buſineſs, as to carry men inconſiderate to every thing, and put them wholly out of frame, ſo as not to be able to do any as they could, as *Cicero* ſaith, *Semper ira procul abſit, cum qua nihil recte, nihil conſiderate fieri poteſt, nec ab eis qui adſunt probari:* [Let impatience be always far from you, by reaſon

Thucyd.

reaſon whereof nothing can be done either rightly as it ſhould, or conſiderately;] for thoſe things that are done in heat, cannot be ſo reſolutely performed, nor approved by them that are preſent: But it is likewiſe prejudicial and hurtful to the body; for ſaith *Seneca*, *Iræ exitus furor eſt, & ideo ira vitanda eſt, non immoderationis cauſa, ſed & ſanitatis:* [The end of Choler is Madneſs, therefore ought to be avoided, not only for Moderation, but alſo for Health's ſake.] This one defect, where it gains footing, ſhall mar all other Virtues and Parts, be they never ſo excellent and adorning.

The next is Modeſty, that he be not over-confident and peremptory in his Words or Aſſertions, nor giving to much Boldneſs and Obſtinacy in his Determinations. Yet on the other ſide, too much Baſhfulneſs is not commendable in any, unleſs a Young Man, as *Seneca* ſaith, for then it is *Signum virtutis.* Yet are many of ſuch a ſoft and facile Conſtitution, that the leaſt Contradiction of their Diſcourſe, though in a known Truth, pre-

presently riseth their bloud in their face. *Durat adhuc perversa recti verecundia*, as the same *Seneca* saith; and he, maugre his Stoick Apathy, was forced to say, *Invitus erubesco.*

Hereunto we may adde Humility, whereby our Student may avoid preposterous Reading, not to be puffed up with knowledge, which conceit once admitted, makes him neglect all industry, because in his own opinion he hath arrived already at the heighth of learning and knowledge. *Multi ad sapientiam pervenissent nisi se jam pervenisse putassent:* [Many had arrived at wisdom and knowledge, had they not thought themselves there too betimes.] And if that knowledge which they falsly fancy in themselves, were true as they would have it, yet *Maxima pars eorum quæ scimus, est pars minima eorum quæ ignoramus:* [The greatest part of what we know, is the least part of what we know not.] Such a man is yet to seek, nay he is hardly yet in the way to knowledge. And this Study being *multorum annorum opus,*

opus, our Student muſt be willing to learn from every body, and think none ſo mean, but that they have ſomething worthy the learning. And though our Student fancy that he knows more then others, yet he muſt needs think that others know ſome things that he doth not. *Prudens* (ſaith one) *omnes libenter audit, omnia legit, non Scripturam, non perſonam ſpernit, ab omnibus indifferenter, quod ſibi deeſſe videt quærit, non quantum ſciat, ſed quantum ignoret conſiderat*: [A wiſe man hears every man willingly, and reads all, and doth neither deſpiſe the perſon, nor the writing, but ſeeks indifferently from all what he ſees wanting in himſelf; neither doth he ſo much conſider what he knows, as how much he knows not.] And ſome there are that flee ſo high of a ſudden, that they count it a diſgrace to learn from others, but would be content to begin and end their Study at once: wherefore ſaith one, *Scio quoſdam eſſe qui ſtatim Philoſophari volunt*: [Some (ſaith he) would be Philoſophers in an inſtant.] Hal. 3. Didaſc.

He

He must not therefore nourish any high Opinion of his own Abilities; much less so to be in love with his own, as to set light by all other mens Parts, how excellent soever, with a *Quanto melius tu hæc feciſſes?* And lastly, let him know this to be an infallible Rule, That to boast or talk much of ones Knowledge, is a sign of Ignorance, and that invincible too.

And lastly, that which gives a grace to all the rest, is Courtesie and Affability, which is a necessary Qualification in our Student. This is that which illustrates and adorns all other Gifts. This begets Love and Friendship, whence comes Conference, the Life of Study. Therefore *Aristotle* gives it no other name then φιλία, [Friendship.] And saith *Cicero*, *Difficile enim dictu est, quantopere conciliet homines comitas, affabilitasq; sermonis.* And well doth it deserve the name of Friendship, in as much as it doth excel it; for Friendship is by reason of the Love that is joyned with it, but this is ἀνευπαθὸς, *sine amoris*

Lib. 2. Eth. c. 7.

Lib. 2. Off.

ris affectu, and Friendſhip is onely towards our Acquaintance; but Affability and Courteſie is *æque erga notos & ignotos, æque etiam erga eos quorum familiaritate utimur, atq; erga eos quorum familiaritate non utimur.* Eth. l. 6. 4. c. 6. Hereby is he preſerved from Sullenneſs, Moroſity and Peeviſhneſs, that he offended no man hereby, *Hunc habere ſibi propoſitum, ne quem offendat, aut potius ut delectet.* And herein there is a mean to be obſerved, that on the one ſide our Student do not fall into an ἀρεσκείαν, too great a deſire of compliance, who laying aſide all Gravity, Decency and Honeſty, approve of all the Deeds of others, or at leaſt feign themſelvs ſo to do, be they never ſo foul or unbecoming, obſerving no other name then κόλακας of Flattering Paraſites. Nor on the other ſide into a δυσκολίαν, a vein neither of pleaſing nor approving of any Perſon nor Actions; who either hate Society, or given to Company at any time, they are ſullen, and will neither in good and civil Diſcourſe, or ſo much as a cheerful Look, comply

with others, but rather disaprove or reprove every thing, and that with a peevish and biting kinde of Speech, rendring themselves no less odious then troublesome to their Companions. *Inter utrumq; tene*, Discretion must guide him therein, to whose Direction we leave him. And having done with his Qualifications Intellectual and Moral, there are some Conditions (as we may call them) not falling under either of those Heads, very requisite in our Student, for his well being, whereof briefly.

Senec. The first is an inclination to this Studie. *Eo inclinandum quo te vis ingenii defert.* Without this whosoever attemps this or any other Study or Profession whatsoever, doth but labour in Vain: and If the Reason hereof be but considered, here is no cause of wonder; for the same Philosopher tells us that *Coacta ingenia male respondent, & reluctante natura irritus labor est.* This was the Reason that *Isocrates* laying hands on *Ephorus*, drew him from the Court of Judicature, knowing him

to

to be inclined to, and fitter for another employment: *Isocrates Ephoram injecta manu à foro subduxit utiliorem componendis monumentis historiarum ratus.* Seneca Ep And for any to attempt this Studie *invita Minerva*, as they say is plain folly; nor can it be imagined that any man with a loathing Minde and forced Industry, can compass such a laborious Studie, not being able to take any Delight therein. Whatsoever such a man doth, is but to plunge himself the deeper in Difficulties: Whereas on the other side, a propensitie to the Studie renders the Work less tedious, the pleasure that the Student findes therein far exceeding any trouble or vexation whatsoever. And this delight in the Studie, makes the Student throughly to understand and apprehend the same; and it doth not onely dilate the spirits, but doth also quicken the Memorie, according to the saying, *Quæ magna æstimamus, memoriæ infigimus.* [What we have a high esteem of, we fasten in our Memorie] In a Word, without inclination to a Stu-

dy, there can be neither Pleasure nor Proficiencie therein

The next Condition requisite in our *Student*, is a solid, settled and constant Minde without which it is impossible for him to make any profitable Progress in this Studie. For the Cases being so Intricate, and the Reasons hereof so deep and weighty, a wavering and unsetled Minde cannot attain to the Apprehension thereof; being herein like the *Mathematicks*, wherein if the *Minde* be caught away but for a moment, he is to begin anew. One of such an unsettled *Minde*, is not capable of *Meditating* and Ruminating upon those thiugs that it hath with difficulty apprehended, so as to fix it, and make them its own. *Qui ex aliis in* Senec. *alia transiliunt, aut ne transiliunt quidem, sed casu quodam transmittuntur, quomodo habere quicquam certum maxsurum ve possunt, suspensi & vagi?* And this unsetledness and inconstancie is *signum vacillantis animi, & non aum tenentis tenorem suum*; in *Seneca's* Stile, it produceth diverse and contrary

contrary thoughts, *aliis alio nitentibus*, which, like diverſe and contrary Diet, hinders Digeſtion, one thought ſmothering the other, not ſuffering him to have the leaſt Benefit of any. His Body is among his books, but not his mind; or if reading, doth not ſhew himſelf attentive and diligent, but doth either number the Tiles of the Houſe, or build Caſtles in the Air, or doth nothing leſs then what he ſhould do; his thoughts being much like good Womens talk at a Goſſiping, whereof *Seneca* tells us, *Varius nobis fuit ſermo ut in convivio, nullum rem uſq; ad exitum adducens, ſed aliunde tranſiliens.* And hence ariſeth raſh and haſty Judgment, and ſlight cenſures of weighty Matters; which is the fault of too many, not conſidering that which *Fabius* ſaith in *Livie*, *Omnia non properanti clara certaque fiunt, feſtinatio improvida ac caca eſt*, and therefore is rightly termed *noverca ſcientiæ* [The Stepdame of knowledg] *Cum ſeriis ſerio agendum*: this Sutdy being built upon the perfection of Reaſon, requires Bulbeck.

a conſtant and ſerious Meditation; and what we apprehend *altius quotidiana meditatione figendum eſt*; That being faſtened in our Mindes, and the Reaſon thereof fully conſidered, *Habitus fiat quod eſt impetus*. That bringing it within the Verge of his own Reaſon, he may upon the leaſt ſummons finde the reſult thereof. In Order hereunto, our Student is to have a great care, that his intent Studie do not put him into a loathing, and infect him with thoſe melancholly Humours, that ſome are troubled withal; liking and nouriſhing moſt thoſe thoughts, that are furtheſt from their intended Profeſſions, building Chimer'es of their own imagination, and yeilding themſelves to their obvious fancies, and imaginary wiſhes, and pine away their thought in empty Velleities, which are but *motus in vacuo*, like *Noahs* Dove, finding no Place for her Feet to reſt on; empty indeed, being ſuch as are ſo far from enjoyment, that they addreſs no endeavours towards the ſame. *Concupiſcunt*

ſcunt etiam, & quæ non poſſunt. This will in a ſhort time take away his Appetite, and bring a loathing upon this and all other Studies; and not onely ſo, but it blaſteth that pretious Flower of our Students Garden, I mean Memorie; for it impreſſeth ſo many Figures upon the Brain, that the *Actus reminiſcendi* is hereby confounded, and makes him an Old Man before his time: for Old Mens Memories are full of ſo many Figures of things, which they have ſeen and heard, in the long courſe of their Life, that when they would beſtow more therein, it is not capable thereof; for it hath no void Place where to receive it. And the many projects that ſuch Humoriſts heads are troubled withal, makes them ſo look forwards, that all that paſſed is forgotten; which made the ſame Philoſopher ſay *Futuro imminentium caduca memoria eſt.* Our Student therefore is to uſe his utmoſt endeavours to compoſe and ſettle his Minde. Et *primum compoſitæ mentis argumentum eſt, poſſe conſiſtere, & ecum morari.*

Seneca de ira l. 1. c. 3.

Seneca de benef. l. 3

The next is Diligence in purſuing of his Studie: for *Studium eſt aſſidua ac ſagax retractio cogitationis.* And the Books and Caſes are ſo many, long and intricate, which muſt be read & diſpoſed for our Students future Practice, that it cannot be compaſſed without unwearied Diligence. Nor can the vaſt Body of the *Law* be reduced into a narrower Compaſs; which if it were poſſible, yet would it be no great advantage: for my Lord *Cooke* ſaith, *Compendia ſunt diſpendia.* But indeed it is impoſſible, unleſs he can likewiſe take away the infinite and inumerable Affairs and Actions of men, which daily cauſe diverſity of Caſes. Therefore muſt our Student take a reſolution not to ſink under his Burden, but with all convenient Induſtry to proceed in his Studie; not to be wearie, but to take up *Seneca*'s Reſolution, *Nullus mihi per otium dies exit, partem noctium ſtudiis vindico, non vaco ſomno, ſed ſuccumbo, & oculos vigilia fatigatos cadenteq; in opere detineo.* Nor is it ſufficient for him not to forgo his

Ep. 8.

his Station, but he muſt with all courage and Alacritie go on in his Studie, taking this for a Rule, *Non progredi eſt regredi*: [If he will not go forwards, he muſt go backwards.] And let him not think that if he gives any ceſſation to Study, that he ſhall find it where he left it: for ſo will he unlearn more in a Week then he can learn in a Month. Neither is that all, but the tediouſneſs he takes in going over that again, which by his neglect he forgot, is more irkſome then the firſt onſet. And our Student without a great hindrance of Proficience cannot abridge any of his ſet Time of ſtudie; nor is he to make a Recreation onely thereof, but to make it his whole buſineſs; and ſo much the rather, becauſe it is true that the Philoſopher ſaith, *Ars longa vita brevis*, [The Studie is long, and the Time but ſhort.] *Non cum vacaveris ſtudendum eſt; omnia alia negligenda, ut huic aſſideas, cui nullum tempus magnum ſatis eſt, etiam ſi à pueritia uſq; ad longiſſimos humani ævi terminos vita protendatur* S. Seneca.

tendater. Nor is it any colour to pretend weakneſs of Body and tenderneſs of Complexion, ſaith Maſter *Fulbeck*; theſe are but pretences indeed which ſuch fond pretenders by their conceit & cuſtom at laſt bring themſelves to. Nor is diverſity of Buſineſs and allowable excuſe, though I grant this may be ſome hindrance: for *Obſtat ad ſtudea liberalia turba negotioru*, Yet muſt our Student wave every thing that may interrupt his Studies, if it can be done with convenience; *Vitare turbam* (with *Seneca*) *& ſecedere, non tantum ab hominibus, ſed etium á rebus, & primum à ſui.* And having once freed himſelf from Buſineſs, let him not involve himſelf therein, like thoſe of the ſame Author, *Qui ſimulant occupationes & augent*: And in ſuch matters as are not to be neglected, but either for conveniencie or neceſſity to be performed, let him obſerve the ſame Authors Rule, *Rebus non me trado ſed commodo, nec conſector perdendi temporis cauſas.* Our Student therefore is to be diligent in his Stu-

dy

dy: for ſaith one, *Otium ſtultitiam, labor ſcientiam generat.*

And now having done with his Qualification, and armed him *Cap-a-pe* againſt this Encounter, if our Student be defective in any of theſe, then he muſt make uſe of the Lord *Bacons* advice, who ſaith, That the covering of Defects is of no leſs importance then the valuing of good Parts, which may be done three ways; by Caution, by Colour, and by Confidence. 1. By Caution, when men doing ingeneouſly and Diſcreetly, avoid to be put unto thoſe things, for which they are not proper: whereas on the contrary, bold & unquiet ſpirits will thruſts themſelves into matters without difference, and ſo publiſh and Proclaim all their wants. 2. By Colour when men make Way for themſelves, to have a conſtruction made of their fauls, or wants, as proceeding from a better cauſe, or intended for ſome other purpoſe; and therefore whatſoever want a man hath, he muſt ſee that he pretend the vertue that ſhadoweth it,

as if he be dull, he must affect Gravity: and so the rest. For the second, a man must frame some probable cause why he should not do his best, and why he should dessemb'e his Abilities; and for that purpose must use to dissemble those Abilities that are most notorious in him, to give colour that his true wants are but Industries, and Dissimulations. 3. By Confidence, which is the last, but surest Remedy, (being that which beggers all other Parts) to depress, and seem to despise whatever a man cannot attain. This Confidence doth fascinate and bind Hand and Foot, those that are either shallow or weak in judgement, which are the greatest Part; yea, and prevaileth with the wisest at some times. These men when they have promised great matters, and failed most shamefully, yet if they have the perfection of Boldness, they will but slight it over, and make a turn and no more ado. *Mahomet* made the People belive that he would call a Hill to him, and from the Top of it offer up his Prayers

for

for the obſervers of his Law. The People aſſemble; *Mahomet* called the Hill to come to him, again and again; and when the Hill ſtood ſtilll, he was never a whit abaſhed, but ſaid, *If the Hill will not come to* Mahomet, Mahomet *will go to the Hill.* To ſlight defects is no little Policy; obſerving the principle of the Merchants, who endeavour to raiſe the price of their own Commodities, and beat down the price of others. But there is confidence that paſſeth this other, which is to face out a mans own defect, in ſeeming to conceive that he is beſt in thoſe things wherein he is failing and to help that again, to ſeem on the other ſide that he hath leaſt opinion of himſelf, in thoſe things wherein he is beſt. And to our Student thus qualified for this Study, I muſt ſay with *Seneca*, *Legi te totum dedica, nam dignus es illâ, & illa te digna*, as will appear in the following Chaptar.

Chap.

CHAP. II.

Of the Nature of the Study.

THe next thing to be considered by our Student is, The Nature of the Study, and that is Law, which the Greeks call Νόμο, ἀπὸ τ νέμειν *à distribuendo*, answerable to that of *Justinian*, that it is *Jus suam cuiq; tribuendi*. The Latines call it *Lex*, *a ligando*, as St. *Germin* in his *Doctor* and *Student* saith; for, saith he, the Law is derived from *Ligare* to binde. But *Bracton*, and before him *Cicero*, derive it *à Legendo*, from chusing, because of the choice of Knowledge that is in it; wherefore saith he, *Eamq; rem tibi Græco nomine, á suum cuiq; tribuendo appellatam, ego nostro á legendo, nam ut illi æquitatis, sic nos delectus vim, in lege ponimus, & proprium tamen utrumq; legis est.* And this Law is two fold, Native and Positive. The

Cicero de legibus.

Law

Law Native, is either the Law of Nature, or Reaſon: thus divided, becauſe the Law of Nature generally conſidered, is referred to all Creatures, aswell reaſonable as unreaſonable for all unreaſonable Creatures, live under a certain Rule or Law given to them by Nature neceſſary for them to the Converſation of their being; but as it is referred to the reaſonable Creatures, it doth not differ from the Law of Reaſon, as St. *Germin* in his Dialogue obſerveth; for, ſaith he, the Law of Nature ſpecially conſidered, is called alſo the Law of Reaſon: and the ſame Author tells us, that when the Law eternal is known to his Creature reaſonable, by the Light of Natural Underſtanding, or by the Light of Natural Reaſon, that is called the Law of Reaſon. And herewith agreeth *Cicero's* Definitions hereof; *Lex eſt ratio ſumma inſita in homines natura, quæ jubet ea quæ facienda ſunt, prohibet q; contraria.* Concerning this Law, the ſame *Cicero* ſaith, *Conſtituendi vero juris ab illa ſumma*

Doctor and Student, c. 2.

Cic. de legibus.

lege

lege capiamus exordium, quæ ſeculis omnibus ante nata eſt quam ſcripta lex ulla, & non tam deniq; incipit lex eſſe, cum ſcripta eſt, ſed tum cum orta eſt, eſt orta autem ſimul cum mente divina. And therefore this Law is alwaies good and juſt, and ought to be kept amongſt all men at all times; and therefore cannot he aboliſhed or changed; according to the Maxime, Ib. *Jura naturalia ſunt immutabilia*: and againſt this Law, Preſcription, Statute or Cuſtome cannot prevail. And all poſitive Laws muſt be conſiſtent with the Law of Reaſon, according to that of *Cicero*, Ib. *Omnium legum eſt inanis cenſura, niſi legis divinæ imaginem gerat.* And if at any time any poſitive Laws are made that are contrary to the Law of Reaſon, they have not the force of a Law, but are void and againſt Juſtice; for this is the Rule or mold for all other Laws whatever. Wherefore ſaith the ſame *Cicero*, *Si populorum juſſis, ſi Principium decretis, ſi ſententiis judicum, jura conſtituerentur, jus eſſet latrocinari, jus adulterare, jus teſtamen-*

ments

menta falsa supponere, si hæc suffragiis aut scitis multitudinis probarentur. And, *Stultissimum est illud, existimare omnia justa esse, quæ scita sunt in populorum institutis aut legibus.* [If the Peoples Ordinances, the Princes Decrees, Sentences of Judges, could be made Laws, it would be lawful to steal to commit Adultery, and to forge the Wills of the Dead, if it should be allowed by the suffrage or Voices of the People. And it is a most foolish thing to imagine all things to be just which are commanded in the Ordinances or Laws of the People.] Nor is it the Conceipts or Mandates of Men that can make Laws, *Non enim opinione sed natura constitutum est Jus.* Yet the Law of Nature not being discerned by all, it is necessary for the good order of the people to have many things added by Magistrates to the Law of Nature, or rather in Affirmance of it, as some Statutes are of the Common Law. So that the positive Law is but the Law of Nature or Reason written in Capital Letters, discernable by the Eyes

Eyes of all, and as a Comment thereupon. Therefore from the Precepts of the Law of Reason, (as, that every man deveſt himſelf of the right he hath to all things by Nature: that every man is obliged to ſtand to, and perform thoſe Covenants he maketh that every one do help and accomodate each other as far as may be without danger of his Perſon, or loſs of his Means, to maintain and defend himſelf: that ſuch things as cannot be devided be uſed in common, proportionable to the number of them that are to uſe the ſame, or without limitation when the quantity thereof ſufficeth: to love good, and flee evil: to live peaceably: in a word, the old Precept, *Quod tibi fieri non vis, alteri ne feceris*, and many ſuch like) are derived the Laws Poſitive, as likewiſe from other ſecondary Precepts, which follow by conſequence or inference, and are neceſſary Concluſions drawn from the firſt; as in this laſt we ought to do as we would be done by: hence follows, that wrong is not to be done to any man,

be

because he would not be wronged by any man. That Good is to be loved, here is included that a man shall love his Benefactor, in that he is a Benefactor, and includeth in him a Reason of Goodness. And from this Law of Reason are framed the Laws positive, and therefore must concur with the Law of Reason. By these Laws positive, it appeareth who hath right to things, & who not; for whatsoever a man hath by such positive Laws, he hath justly; and whatsoever he hath against such Laws, he hath unjustly.

Positive Laws are sundry and divers, according to the Constitutions of the several places and Countries that they are in force in. And there are in Nature certain Principles and Fountains of Justice, whence all positive Laws are derived, but as Streams: and like as Waters to take Tinctures and Tastes from the Soiles thorow which they run, so do positive Laws vary according to the Regions and Government where they are planted, though they proceed from the same Fountains: and such are the Laws

Polyd. Comment' 65.

Laws of *England*; which consist of three parts; the Common Law, Statute-Law, and Particular Customes. As Sir *John Fortescue* saith, ——— *In legibus sunt clementa quædam unde ipsæ profluent, ut ex materia & forma, quæ sunt consuetudines, Statuta, & jus naturale, ex quibus sunt omnia jura regni, ut ex materia & forma sunt quæq; naturalia*: [In the Laws (saith he) there are certain Elements whence they flow, as of matter and form, which are Customes, Statutes, and the Law of Nature [or the *Common Law*,] of which consisteth the Law of this Realm, as all other natural things proceed out of matter and form.]

I. The Common Law of *England* consists, 1. Of common Customes of the Realm time out of mind used, being neither against the Law of God, nor Reason, but found to be convenient and necessary for the Commonwealth; as, That the eldest Son is onely Heir to his Ancestour; and if no Son but Daughters, then all to be Heirs.

That

That Inheritances shall never ascend from the Son to the Father, or any other Ancestour in the right Line. That if a man purchase Lands in Fee, and die without Heirs, the Land shall go to the Lords by escheate. If an Alien have a Son that is an Alien, and after is made Denizen, and hath another Son, and purchaseth Lands, the younger shall inherit. Bastards shall not inherit. All Goods and Chattels of the Testators shall go to the Executors. All the Interest of the Wife in her Goods is determined by her Marriage, and invested in the Husband. If the Wife be an Inheritrix, and have Issue and dies, and the Issue dies, the Husband shall be Tenant by the Courtesie. If the Wife be of the age of nine years, and the Husband is seised of an Inheritance during the Coverture, & dies, the Wife shall have the third part during life for her Dower. And such like.

II. The Common Law consists of Principles

Principles or Maximes, which have been alwayes taken for law in this Realm. *Sunt quædam universalia in legibus* Angliæ, *quæ in iisdem docti similiter & Mathematici Maximas vocant, Rhetorici Parodoxas, & Civilistæ Regulas juris denominant*, saith *Fortescue*: [There are certain Universals in the Laws of *England*, which the Learned therein, as likewise the Mathematicians, call Maximes; the Rhetoricians Parodoxes, and the Civilians Rules of Law. And these Maximes it is not lawful for any one to deny, being indeed Conclusions of Reason; and therefore every one of them is sufficient Authority to it self, agreeing with that of *Seneca*, *Juris consultorum valent responsa, etiam si ratio non reddatur, nam per se multum habent ponderis*. And saith another, *Omnis disciplinæ progressus à generalibus practicis rectè deducitur, quæ veluti cujusq; artis fundamenta ad omnium specierum, atq; individuorum cognitionem ita necessaria sunt, ut neq; ignorari, neq; in dubium revocari debeant. Pla-*

Forteſcue de iand. leg. Ang. p. 21.

Ployd. Com 27 a.

ne ignorari Universalia non possunt sine quibus ad particularium notitiam minime pervenitur. Revocari in dubium non debent, cum ut ipsa luce clariora, vel notius supra se habeant nihil. Sect his igitur. Just. de just. & jur. And *Fitz.* in his Preface to his *Nat. Brev.* to the same purpose saith. *En chescun art & Science il y ad certain Rules & & tel manner sont divers Rules & Fundaments en la Science del common Ley des terre as ceux que veilont apprendir la dit Ley, especialment al commencement; car desuis ceux Fundaments as queux doit home done foy & credence, & les quels il ne poit denier. Et en queux home doit doner foy & credence, & non pas eux denier queux sont fort necessaries à tout la ley depend.* They are of the same effect and force as the Statutes are and are alwayes determined by the Judges, and not by a Jury. And whereas the general Customes be known to all throughout the Realm as well to the Unlearned as the Learned, and may easily be known, and by little study, these Maximes are onely known in the

the Kings Court, or among them that take great ſtudy in the Laws of the Realm, and among but few other perſons: for inſtance: That deſcent taketh away Entry. A Writ of Action cannot be granted over. The Defendant in an Action of Debt upon a ſingle Contract, may wage his Law. If a Villain purchaſe Lands, and the Lord enter, he ſhall enjoy them as his own. Things that lie not in a manual Occupation, cannot be granted without Deed. The King can diſſeiſe no man. No Freehold may be either given to, or derived from the King, but by matter of Record. A Leaſe and a Releaſe amount to a Feoffment. None ſhall take benefit of his own wrong. No man can do an Act to himſelf. The Law reſpecteth the order of nature. When the cauſe ceaſeth, the effect ceaſeth. Things be diſſolved as they be contracted. Things grounded upon an ill or void beginning, cannot have a good perfection. He that claimeth paramount a thing, ſhall neither

neither take benefit nor hurt thereby. Where the Foundation faileth, all goeth to the ground. A personal Action dies with the person. A personal Action once suspended, is gone for ever. The more worthy thing draws to it, the less worthy. Things accessary are of the nature of the Principal. Possession is favoured where there is equality of Right. Nothing to be void which by possibility may be good, and the like. And it would be worth the while if our Student in his Reading should transmit all the Maximes he meets with in an orderly way, Alphabetically or otherwise, with the Book and Page to a small Manual, which he may always carry about him, ready to take up those *tempora subsiciva*, which fall from the hottest business, (for business ebbs and flows) when perhaps the distance of that, from his own place, can afford him no better conveniency.

And this common Law is the most excellent and most perfect, and

without comparison the best to make and preserve a Common-wealth: for other Laws are imposed upon the Subjects before any probation or trial made, whether they are fit and agreeable to the nature and disposition of the people, or whether they will breed any inconvenience or no; but Custom never becomes a Law to bind the people, until it hath been tried and approved time out of mind, during all which time, there did thereby arise no inconvenience; for if it had been at any time found so, it had been used no longer, but had been interrupted, and consequently had lost the force of a Law.

II. The second part of the Laws of *England* are Statutes, made by the King, Lords Spiritual and Temporal, and the Commons assembled in Parliament, in such cases where these Customs and Maxims were defective, or in affirmance of these Customs and Maxims, if remisly observed. And this Statute-Law cannot chuse but be excellent, being several times debated in several places,

and

and by perſons of ſeveral conditions, and the Royal Conſent likewiſe given before it hath the force of a Law; which if it were not every way convenient, and fit for the intended purpoſe, ſome of ſo great a number muſt needs ſpie the inconvenience and danger.

The third and laſt are the particular Cuſtoms, uſed in ſeveral Counties, Cities, Boroughs and Seignories in this Realm; which not being diſagreeable to the Law of Reaſon, though againſt the ſaid general Cuſtoms, (for *conſuetudo tollit communem legem*) yet ſtand in force, and are taken for Law: and theſe Cuſtoms if denied, are tried by a Jury of twelve men, unleſs ſuch a Cuſtom be of Record in the ſame Court; as the Cuſtom of Gavel-kind in *Kent*, **That all the Brethren ſhall inherit; and if the Father be attainted of Felony, and executed, yet ſhall the Children inherit:** according to the ſaying.

The Father to the Fough,
And the Son to the Plough.

And the Cuſtom of *Burrough Engliſh* in ſeveral Seigniories, where the youngeſt onely Inherits. In London, That the Inhabitants (before the Statute of 32 H. 8. of Wills) might by their Teſtament inrolled bequeath their Lands to whom they would, ſave in Mortmains; and if Freemen, in Mortmain. That in an Action of Debt without ſpecialty, if the Plantiff produce a Bill under the Defendant's hand acknowledging the Debt, he ſhall not wage his Law. Alſo in ſome Mannors the eldeſt Daughter by the Cuſtom ſhall only inherit. Alſo in ſome places the Wife ſhall have all the Tenements of her Husband for her Dower: in ſome places the Moyety, and ſeveral others.

Doct. & Stud.

Liber albus.

Litt. 140. b. 110. b.

This of Law, above all other Profeſſions, is moſt honourable, in as much as it is both profitable and pleaſant: that it is moſt profitable, one experienced herein affirme, to wit, *Forteſcue*, who ſaith, *Non eſt advocatus in univerſo mundo, qui ratione officii ſui tantum lucratur*: and

pleaſant

pleaſant it muſt needs be, conſiſting both in Action and Contemplation; for the ſame Author tells us, *Vita ipſorum plus contemplativa videtur quam activa, ſicq; quietam illi vitam agunt, ab omni ſollicitudine & mundi turbinibus ſemotam.* And it is not onely ſo, but it is the principal means of attaining Felicity, as far as may be in this life: for without Skill and Knowledge in this Profeſſion, Juſtice cannot be adminiſtred; and Juſtice is perfect Virtue, to wit, Legal Juſtice, not that which is called Commutative or Diſtributive. And the ancient Philoſophers contending ſo much about their *Summum bonum*, have agreed in this one. For the *Peripatetick*s placing it in Virtue, the *Stoick*s in Honeſty, and the *Epicures* in Pleaſure; yet the *Stoick*s defining Honeſty to be that which is well done, and praiſe-worthy through Virtue; & the *Epicures* affirming nothing to be pleaſant without Virtue, agreed with the *Peripatetick*s herein, that it is Virtue alone which obtains Felicity. So that Juſtice being *Vir-*

tis perfecta, and this not attainable but by the Law, it neceſſarily ſollows that it is the true, if not the onely means of attaining felicity: as Sir *John Forteſcue* ſaith, *Leges humanæ non aliud ſunt quam regulæ quibus perfecta juſtitia docetur, juſtitia vero quam leges revelant, non eſt illa quæ commutativa vel diſtributiva vocatur, ſeu alia quævis particularis virtus; ſed eſt virtus perfecta, quæ juſtitiæ legalis nomine deſignatur. Unde cum perfectus uſus virtutum ſit felicitas, & juſtitia humana non niſi per legem perfectè nanciſcitur, nedum ſit virtutum effectus ſed & omnis virtus, ſequitur quod juſtitia fruens fœlix per legem eſt, & per eam ipſe ſit beatus*, Law is the life of peace, and conſequently of a flouriſhing Common-wealth; it is the rule and leſſon of Juſtice, ſo neceſſary for all perſons, times and places, as no Family, no City, no Common-wealth, no Kingdom can ſtand without the ſupport thereof. *Civitas ſubſiſtere nequit quæ legibus & conſuetudinibus non eſt firmata.* Without this the Prince doth not

Ariſt. l. 6. Pol.
Britton. fol. 1.
Fleta. l. 1. c. 29.

not know how to rule, nor the people to obey. Without this the Prince looſeth his Prerogative, and the Subject his Liberty; the rich man is ſpoiled, and the poor man oppreſſed. *Lex* (ſaith *Cicero*) *eſt fundamentem libertatis.* Without this we cannot travel ſafely by day, nor ſleep ſecurely by night. Without Law, we ſhould be oppreſſed by force in the Country, if ſhe did not defend us; and undone by fraud in the City, if ſhe did not relieve us. Law incloſeth every man's Garden and Field, and makes it his, and makes every man's Cottage his Caſtle of defence. So as there is not ſuch an univerſal and continual uſe, neither of the light of the Sun, nor of Fire and Water, as there is of the light, heat and comfort of Juſtice: for a man may remain alive ſome hours without the uſe of theſe common benefits, but a Common-wealth, wherein each private man's weal conſiſteth, cannot ſtand or continue one minute of an hour, if Juſtice, which is her Soul, be departed from her;

which if it ſhould happen, ſhe would leave this diſmal ſhriek behind her. That *Vox magna & deteſtabilis*, as *Seneca* calls it, ἐμοῦ θανόντος γαῖα μίχθητι πυρί, [When Juſtice dies, let the World be made a Bone-fire.] For this ſecures Us and Ours againſt all violent Attempts whatſoever. And if we do but conſider men in the ſtate of Nature, we may eaſily diſcover the great Benefits that flow from the Law. For men being in an equal ſtate and condition, and of equal power, which was not difficult for them to compaſs, for it is an eaſie matter for the weakeſt to kill the ſtrongeſt; and they are equals, who can do equal things one againſt another: From this equality muſt ariſe mutual fear, and therefore could neither expect from others, nor promiſe to themſelves, the leaſt ſecurity. And from this Equality was liberty given to every man to make uſe of the utmoſt of his Natural Faculties to his greateſt Advantage; no other being Judge of this Advantage but himſelf. And men in this ſtate ſtriving

Lib. de Clem.

to

to continue that Right which for the preſent neceſſity Nature had given, or rather they had taken of all to all, to do what he would, and againſt whom he thought fit; and to poſſeſs, uſe and enjoy all that he could obtain: according to the Poet, *Vivitur exrapto*; and whatſoever he would, that being good, becauſe he wills it, and onely he judge of its goodneſs, and it being in his power to uſe all means for the obtaining of his ends. Hence muſt needs ariſe Jealouſies and Suſpitions on all hands, which at the laſt can do no leſs then break forth into a civil War. The Law provides againſt all theſe inconveniences, by ſubjecting them to her Precepts, from whence ariſeth inequality and property, *meum & tuum*: although as Mr. *Fulbeck* ſaith, theſe things were not by the Law of Nature, but by the neceſſity of the time, for which cauſe afterwards men by the Precepts of that Law were civilized, and brought to a ſociable Communion. And therefore not without reaſon hath this Profeſſion gain-

ed favour both of God and men. And it is obſerved as a ſpiritual bleſſing of Almighty God, that none of this profeſſion die, *Inteſtatus & improles*, [without will, and without child] as *Forteſcue* hath it. *Unde & hoc genus gratiæ vidimus ſubſecutum, quod vix eorum aliquis ſine teſtamento & exitu decedat, quod juſtis magna & quaſi appropriatæ benedictionis Dei eſt.* Another thing no leſs obſervable is, that more noble Families of this Nation have had their riſe from this profeſſion then any other whatſoever, as the ſame Author obſerves, *Ex Judicum ſobole plures de Proceribus & Magnatibus Regni huc aſq; prodierunt, quam de aliquo ſtatu hominum Regni, qui ſe prudentia & induſtria opulentos aulicos nobileſq; fecerunt.* [There are more Peers and great men of this Kingdom ſprung out of the Judges off-ſprings, then any other condition of men, that have by their wiſdom and induſtry made themſelves wealthy, famous and rich.] And this will eaſily appear to any that ſhall

De laud. leg. Aug. 124. b.

compare

compare the names of ſuch Families with the Profeſſors of Law, in the Terms and Year-books. And ſaith another, *It is an infallible argument, that the eſtates of ſuch as riſe by the Law, are builded upon the foundation of vertue, in that God's bleſſing is ſo manifeſtly upon them, not onely in raiſing, but in preſerving their houſes and poſterity; whereof their are examples not a few, and theſe not obſcure, in every Shire in* England.

With man it hath deſerved (as it hath found) favour and reverence; for if the Law be ſo neceſſary, certainly the ſervice of men learned in the Law is very needful, without which, Juſtice it ſelf cannot poſſibly ſtand: for, *Periret juſtitia, ſi deeſſet qui juſtitiam allegaret.* If no man ſtudied the Reaſons of the Law, if no man kept in memory the Rules of the Law, or courſe of proceedings therein, what would become of publick juſtice in a ſhort time? or how ſhould the benefit of the Law be derived or communicated unto the people? For as in the body natural,

the

the Reaſonable Soul cannot uſe her powers but by ſpecial Organs of the ſame body, diſpoſed and fitted by Nature for every Function: So in the Body Politick of a Commonwealth, the Law, which is the Soul thereof, produceth no effect or operation at all, but by ſuch of her Miniſters, as by Art and Experience are inabled and qualified for her ſervice; for, *Lex eſt juſtitia inanimata*, ſaith one: *Et Lex eſt mutus Magiſtratus*, ſaith *Cicero*: The Law of it ſelf is dumb, and ſpeaks nothing, but by the tongue of a learned and eloquent Lawyer; ſhe is deaf, and heareth no complaint, but by the ear of a grave and patient Judge; ſhe is blind, and ſeeth nothing, no enormities, but by the eye of a watchful and diligent Officer. And although the Philoſopher tells us, that *Jupiter* did firſt invent and give the Law, yet was *Mercury* ſent with that heavenly gift to deliver it over unto mankind. So that without the aſſiſtance of theſe *Mercuries*, the learned Profeſſors hereof, there can be little or

Protager. in Plato.

no

no uſe of the Law. In a word, it is dead, *Et non (niſi acta) agit*. Therefore have the Profeſſors hereof been ranked with the ennobled. And, ſaith the Civil Law, the Profeſſors hereof, being the Interpreters of the Law, they are the moſt neceſſary Inſtruments in a Common-wealth, and their Place and Calling is honourable: They ought to be freed of Mulcts, Publick Charges, Impoſitions, and all other Burdens of the Common-wealth, and to be written or ſent unto as unto perſons of ſpecial worth and dignity. And *Conſtantine* the Emperour likewiſe decreed, that yearly penſions ſhould be paid unto them out of his treaſure. And *Valentinian* the Emperor would have them that were by the ſpace of twenty years Profeſſors of the Law, to be called by the name of *Comites*. Neither hath this Nation been wanting herein. The Law is the life of the Common-wealth; for all its peace, plenty, civility, and moral honeſty depend thereupon. That men enjoy their wives, lives, children,

Vid. Fulb. fol. 3. Extat. lex Conſtant. lib 10. Cod.

dren, lands, goods, good names, and all things elſe, they are beholding to the Law for it. *Quid ſunt Regna niſi latrocinia, ſine lege?* Without Law, the Land would be full of Thieves, the Sea full of Pirates, every place full of danger; we ſhould not know what were our own, nor what were another man's; what we ſhould have from our Anceſtors, nor what we ſhould leave to our Children. *Omnia incerta ſunt cum à jure diſceſſum eſt*; lay aſide the Law, and run into unavoidable confuſion, there would be nothing certain, nothing ſure, no Contracts, no Commerce, no Converſation among men; but alſo all Kingdoms and States would be brought to confuſion, and all humane Society would be diſſolved. Therefore well might *Cicero* ſay, *Major hæreditas venit unicuiq; noſtrum à jure & legibus quam à parentibus.* For the gifts of our Anceſtors without Law to ſettle them in us, and keep the poſſeſſion of them inviolate to us, were to no purpoſe. Doth not this profeſſion

comfort

comfort every day ſuch as are grieved, counſel ſuch as are perplexed, relieve ſuch as are circumvented, prevent the ruine of the improvident, ſave the innocent, ſupport the impotent, take the prey out of the mouth of the oppreſſor? Is ſhe not *oculus cæco, & pes claudo*, as *Job* ſaith? Doth ſhe not ſtretch forth *brachium ſeculare*, in defence of the Church and true Religion? So that I eaſily believe that of the Orator, *Conſtat profecto ad ſalutem Civium, civitatum q. incolumitatem, vitam q. hominum & quietem & beatam inventas eſſe leges.* A worthy Profeſſor of the Law (as Sir *John Davies* ſaith) is a Star in the Firmament of the Common-wealth; he is *lux in tenebris* whereſoever he dwelleth: his Houſe is an Oracle, not onely to a Town or City, but to a whole Country round about him: ſo as he may truly ſay of the people that ſeek his counſel, as *Apollo Pythius* ſpoke in *Ennius* of ſuch as reſorted to his Temple.

Cicero.

In prefat. ad relat.

Snatum

Suarum rerum incerti, quos ego ope mea
Ex incertis certos, compoteſque conſilii
Demitto, ne res temere tractent turbidas.

Of poſitive Laws, it is very evident to any that ſhall conſider, and weigh them in the balance, that the Laws of *England* outvy and excel all others, as much as a Star doth a Gloworm. For if they had not been of the beſt ſtamp and frame, ſome of the Conquerors of this Land, namely, the *Romans*, *Saxons*, *Danes*, or *Normans*, either moved thereto by Juſtice, Reaſon, or Affection, would either have changed or abrogated the ſame. Whereof *Forteſcue*, *Et in omnibus nationum harum Regum eorum temporibus, Regnum illud eiſdem quibus jam regitur conſuetudinibus continuo regulatum eſt. Quæ ſi optimis non extitiſſent, aliqui Regum eorum, juſtitia, ratione, vel affectione concitati, eas mutaſſent; aut omnino*

nino delevissent. [In the whole time of the reign of all the Kings of this Nation, this Kingdome was governed by the same Customs that now it is: Which if they had not been the best, some of those Kings, for some ends or reasons, would have either changed or abrogated them.] Excellent they are if only in this, That they do not only secure us against our equals, but all other whatsoever, yea, even our Soveraigns: So that the King cannot in the least wrong his Subjects, nay, cannot do as much as another Subject may. For the King cannot command one in his presence to be arrested, which his chief Justice and divers others may: For if that were legal, and the Subject wronged, he should be put to seek for remedy where none could be had. Nor do the Laws of *England* admit of an absolute and sole Regal power and dominion, such as most Nations groan under, according to the Civilians Rule, *Quod Principi placuit, legis habet vigorem*; but it is otherwise with our Laws, which bind

bind him to a Political as well as a Regal Government, and not without reaſon; for, *Rex datur propter Regnum, & non Regnum propter Regem; quo omni poteſtas Regni referri debet ad bonum Regni.* Whence it follows, that the King of *England* cannot in the leaſt change the Laws without the conſent of the whole Kingdom by their Repreſentatives in Parliament. *Non poteſt Rex angliæ ad libitum ſuum* (ſaith *Forteſcue*) *leges mutare Regni ſui; Principatus namq; nedum regali, ſed & politico, ipſe ſuo populo dominatur.* [The King of *England* cannot at his liſt change the Laws of his Kingdom, for he rules not onely by a Kingly, but alſo a Political Government.] And as he cannot change or alter Laws without ſuch conſent, ſo neither can he make any, ſo as to bind the worſt of his Subjects to any matter of charge or dammage; wherefore ſaith the ſame Author, *Rex Angliæ per ſe aut miniſtros ſuos, neq; Tallagia, Subſidia, aut quævis alia Onera imponit ſubditis ſuis, aut*

Leges

Leges eorum mutat, aut novas condit, ſine conſenſu & aſſenſu totius Regni ſui in Parliamento expreſſo. Nec poteſt Rex Angliæ renitentem populum onerare impoſitionibus peregrinis. And again, *Angliæ Statuta non Principis voluntate, (ut in Regnis quæ tantum Regaliter gubernantur) ſed totius Regni aſſenſu ipſa conduntur.* And the effect of this Political Government is very commodious for a Common-wealth, for the meaneſt of his Subjects cannot be diſſeized of his Free-hold, or queſtioned concerning the ſame, or any other real or perſonal Chattels, but by the Law of the Land; nor any man impriſoned, or tried for his life, or otherwiſe, but by the ſame Law. *Angli non implacitati ſunt de mobilibus aut poſſeſſionibus ſuis, vel arretati de crimine aliquo qualiter cunq; magno, niſi ſecundum leges terræ illius, & hi ſunt fructus quos parit Regimen politicum & regale.* Which is contrarily practiſed in *France*, and other places and Nations, where they are condemned in private, never ſeeing the face of their

their Accuſer; and as privately hurried out of this life, without the leaſt colour of Law.

Nor are the Laws of *England* only the beſt, but alſo the ancienteſt of humane Laws. *Nec illorum mundi regnorum deicolarum leges, tanto ævo notæ ſunt.* Wherefore *Forteſcue* might very well conclude, *Quare non bonas, imò non optimas, eſſe Anglorum Leges & Conſuetudines, ſicut non dicere, ita nec ſuſpicare fas eſt.* And thoſe Cavils of Difficulty, Tediouſneſs, and Uncertainty, which are imputed to the Law, are of ſo little moment, that they ſcarce deliver an anſwer; *Subtilius eſt contempſiſſe quam ſolvere.* For the firſt, I may well ſay with *Seneca*, It is difficult, becauſe we dare not, nay, will not tie our ſelves to a little induſtry to ſearch into it. *Non quia difficilia eſt non audemus, ſed quia non audemus difficilia.* Nor ought it to trouble us, that the Law-books are ſo many and large, that there is ſuch an Ocean of Reports, and ſuch a perplexed Confuſion (as they ſay) of Opinions,

Opinions, inaſmuch as the Science is ſhort and eaſie enough to the induſtrious; and if our books ſhould be compared to the books of the Civil Law, and other Sciences, they are but as mole-hills to mountains. And if it were guilty of Tedioufneſs, yet is not this any cauſe of deſiſting; for I would fain know what things of worth are compoſed without pains and travel; yet if the pains be compared and balanced with the pleaſure and profit, it is (as Mr. *Fulbeck* ſaith) but as a few drops of hail to a whole ſhowre of Manna: but we are aſſured to the contrary, that there is no Tedioufneſs in it, and that by one that had experienced it, to wit, *Forteſcue*, who ſaith, *Quanto plus leges mente pertractaveris delectabilius tu frueris.* [The more we ſee into them, the more delight we have in them.] And as to the Uncertainty of the Law, that is eaſily anſwered, for as the Lord *Cook* ſaith, The Law is not uncertain *in abſtracto*, but *in concreto*; and the incertainty thereof is, *Hominis vitium, non*

Ep. ad lib. 9. relat.

Pro-

Profeſſionis; and ignorance is the cauſe of this contentious incertainty, according to *Cicero*, *Ignoratio juris litigioſæ*. Neither is there any Art or Science that ſtandeth upon diſcourſe of Reaſon, that hath her Rules and Maxims ſo certain and infallible, and ſo little ſubject to diverſ interpretations, as the Common Law of *England*; as the Lord *Cook* obſerves, That in all his time there was not moved in any Courts of Juſtice in *England* two Queſtions touching the right of Deſcents or Eſcheats, or any other fundamental points of the Common Law: ſo certain, ſure and without queſtions are the principles and grounds thereof. Our Student muſt ſhake off theſe cavils, for they are the objections of ſloth and lazineſs, and are in us, and not in the Law. *Non enim in Rebus vitium* (ſaith the Philoſopher) *ſed in ipſo Animo*. And if our Student expects that wiſdom to preſerve *ſe & ſua*, to keep his memory from ſilence and oblivion, to be of great account with the greateſt,

De leg. l. 1.

Ep. ad lib. 2. relat.

greateſt, to attain to that knowledge which is the higheſt of all humane Sciences, (for from this, as the Moon from the Sun, have all other Sciences their ſplendor) he muſt, as the ſame Mr. *Fulbeck* ſaith, take *Phaëton*'s reſolution, to aſcend to the Chariot of the Sun, who ere he could accompliſh that, was to paſs by uncouth ways, and by the ghaſtly ſhapes of deformed creatures. So muſt our Student paſs by a little world of Caſes, Judgments, Statutes, Arguments, Treatiſes, Comments, Expoſitions, Cuſtoms of Courts, Pleadings, Moots, Readings, and ſuch like: *Et per ejuſmodi offenſas ementiendum eſt confragio ſum hoc iter.* This he muſt do, that expects any great meaſure of knowledge in this Science; (being, as *Plato* calls it, *Regia diſciplina.*) And all the pains and induſtry beſtowed hereupon, and all the difficulties of this ſtudy, are ſufficiently rewarded by the dignity, credit, and ample fortune which belongs unto it. There is no Science by which Seneca.

the

the Common-wealth receives more benefit; for there is no course of life, time, age, nor state of men, which can either flourish, or be without the safeguard of the Laws. In a word, *Leges proficiunt ad bonos mores, atque non tantum imperant, sed docent; Animum formant & fabricant, vitam disponunt, actiones regunt, agenda & omittenda demonstrant, sedent ad gubernaculum, & per ancipitia fluctuantium dirigunt cursum; sine his nemo securus est.* Therefore I may safely conclude, that the profession of Law is to be preferred before all other humane Professions and Sciences, as being most noble for the matter or subject thereof, most necessary for the common and continual use thereof, and most meritorious for the good effects it doth produce in the Common-wealth.

Seneca.

CHAP.

CHAP. III.

Of the Means of this Study.

THe Means of this Study are Books, the choice whereof is a matter of no ſmall advantage. Theſe are the *Viatica neceſſaria*, that make the journey both pleaſant and ſhort. And certainly this choice is no matter of indifferency: Therefore ſaith the Wiſeman, *If the Iron be not ſharp it requireth more ſtrength*; intimating that the election of the Means is more effectual then any inforcement or accumulation of indeavours whatſoever. In this Journey therefore, or Study of the Law, our Student, touching Books, is to obſerve two things, *viz.* Their number and nature. For the firſt, he is to ſhun an immoderate deſire of crowding his Study with Books, a practice ſomewhat ancient; for ſaith *Seneca*,

Quemadmodum omnium rerum, ſic librorum quoq; intemperantia laboramus. For ſuperfluity of Books doth not onely diſtract the thoughts, but doth likewiſe burden and weary the ſpirit: *Diſtrahit animum librorum multitudo, & onerat diſcentem turba, non inſtruit, multoq; ſanius eſt paucis te tradere auctoribus, quam per multos errare.* Nor in my opinion is that very commendable which *Bole* ſaith of St. *Germine*, *Tota ejus ſubſtantia cum moreretur in libris fuit*, [That all his wealth conſiſted in Books.] And certainly this is a great inducement of unſettledneſs and ficklenes in the courſe of ſtudy: this is a ſign of an idle and lazie ſpirit, and certainly ſuch are perſwaded, that it is the number of Books that makes a learned man, for with them moſt commonly are none found wanting. *Apud deſidioſiſſimos ergo videbis* (ſaith *Seneca*) *quicquid orationum hiſtoriarumq; eſt, & tecto tenus extracta loculamenta.* Some ſpend more time in gathering of books, then in peruſing them, yea till they have

Bolei Scriptorum illuſtrium Britt. pag. 600.

have ſo many, that they have ſcarce time to read over their Title-pages. *Innumerabilis libri!* (ſaith the ſame Author) *quorum dominus vix tota vita ſua indices perlegit.* Therefore doth he worthily find fault with *Livie*, who ſaid, That the forty thouſand books burnt at *Alexandria*, was the faireſt Monument of Princely wealth: *Elegantiæ regum curæq; egregium id opus ait fuiſſe*; which was indeed a ſtudious Luxury, as our Author affirms; *Non fuit elegantia iſtud, aut cura, ſed ſtudioſa luxuria, imò ne ſtudioſa quidem, quoniam non in ſtudium ſed in ſpectaculum comparaverant.* Yet are they the rather to be excuſed, which do this out of an immoderate deſire of ſtudy: *Ignoſcerem plane* (ſaith *Senecâ*) *ſi è ſtudiorum nimia cupidine oriretur*, then ſuch who keep them to no other end then ſight and ornament; ſuch as he complains of, who peſtered their very Banqueting-houſes and Dining-rooms therewith. *Libri, non ſtudiorum inſtrumenta, ſed canationum ornamenta. Jam inter balnearia &*

thermas, Bibliotheca quoque ut neceſſarium domus ornamentum expolitur. Though I confeſs there is no better ornament for a Study then Books, yet are they not to be ſought after only for ornament; whereof the Philoſopher complains, *Nunc exquiſita & cum imaginibus ſuis deſcripta ſacrorum operum ingeniorum, in ſpeciem & cultum parietum comparantur.* But this is in ſome meaſure avoided by the obſervation of the ſecond, which is their matter: That he be furniſhed with good and approved Authors, following *Seneca's* rule, *Probatos utique ſemper lege.* [To read always thoſe that are approved.] And ſuch as make no choice in their reading, but fall on the firſt that comes to hand, diſorder their Studies, and corrupt their Memories, and above all, loſe time that gives perfection to ſtudy; wherefore ſaith he, *Quid hales cur minus ignoſcas nomen marmore atque ebore captanti, quam opera conquirenti aut ignotorum aut improbatorum Authorum, & inter tot millia librorum oſcitanti, cui volu-*

minum

minum ſuorum frontes maxime placent, titulique. Our Student therefore muſt be moderate herein, and be cumbred with no more then needs muſt. *Paretur itaque quantum ſatis ſit, nihil in apparatum.* Books ought to be only for uſe, none for ornament. Neither ought he to content himſelf with their number, but matter. *Non refert quam multas, ſed quam bonas habeat*, was *Seneca*'s rule. And in his choice let no ſpecious Title delude him, but rather make him more carefull, to ſee that the matter of the Book be anſwerable to the Title; for, *Quorundam ſcripta clarum habent tantum nomen, cætera evanuia ſunt*, their Title-pages too often containing more then the reſt of the whole Book. Seneca.

Books written of the Law, may be reduced to theſe four heads. Hiſtorical, as the Years and Termes of the Common Law. Or Explanatory, as the Lord *Cooks* Commentary upon *Littleton*. Miſcellaneal, as the Abridgements. Or Monological, being of one certain ſubject, as

Mr. *Stamford*'s Pleas of the Crown, Mr. *Lombard*'s Juſtice of the Peace. And theſe Books are written in three Languages, *viz.* Engliſh, French, Latin, as Sir *John Forteſcue* ſaith, *Leges Angliæ triplici lingua addiſcuntur, videlicet, Anglicana, Gallica, & Latina.* And although the Pleadings in the French tongue was taken away by the Statute of 36 *E.* 3. *c.* 15. as the ſame Author hath it, *Olim placitare in lingua Gallica ſoliti fuerunt, quouſq; mos ille vigore cujuſdam ſtatuti reſtrictus eſt*; yet the Language is ſo appropriated to the Law, that it cannot be aboliſhed, becauſe moſt of the terms or words of this Art of Law are in the French tongue, which without great prejudice cannot be alter'd. *Gallica hucuſq; aboleri non potuit propter terminos quoſdam quos plus proprie placitantes in Gallica lingua quam in Anglica exprimunt.* But waving our former diviſion, you ſhall have an account of them as they offer themſelves unto us.

De laud. leg. Ang. p. 100. a.

Ib.

The

The first whereof is the Regiſter, which containeth the Writs of the Common Law, and is the antienteſt Book of the Law, being written long before the Conqueſt, as appears by the Book-caſe of 2 *E.* 3. *pl.* 24. It is called *Regiſtrum Cancellariæ*, in the Statute of *Weſtminſter*, 2. *c.* 24. and this Book (as the Lord *Cook* ſaith) is the antienteſt, and of greateſt authority. *Vid. Bracton l.* 5. *tract. de except. c.* 7. *fol.* 413. Dom. Coucus Ep. ad 9. lib. relat.

The Mirror of Juſtices, *Speculum Juſticiariorum*, moſt of it was written long before the Conqueſt, as by the ſame appeareth; and many things added thereunto by *Andrew Horn*, a learned and diſcreet man (as is ſuppoſed) in the Reign of *E.* 1. or *E.* 2. (as Mr. *Selden* ſaith) who wrote theſe enſuing verſes before the ſame, tranſcribed by Mr. *Selden* out of a Copy of this Book, extant in *Bennet*-Colledge-Library in *Cambridge*. Notes on *Forteſcue*, fol. 3.

Hanc legum ſummam, ſiquis vult mira tueri,
Perlegat, & ſapiens ſi vult Orator haberi;
Hoc apprenticiis ad barros ebore munus,
Gratum Juriſdicis utile mittit opus.

Glanvil de Legibus & Conſuetudinibus Regni Angliæ, written in the Reign of *H.* 2. as appears by his Book. A Hiſtory, ſaith the Lord *Cook*, worth the reading, eſpecially for proſecution of real Actions. About this time was the Treatiſe called, *The Old Tenures*, compoſed; a Piece of good uſe.

Bracton, written by *Henry de Bracton*, a Revered Judge in the time of *H.* 3. is a Book that contains the whole Body of the Law, artificially and methodically written, and of great uſe for the information of the Reaſons of the Common Law.

Britton, compoſed (as ſome ſay) by *John Britton* Biſhop of *Hereford*, by

by the Command of *E.* 1. the Tenour whereof runneth in the King's Name, answerable to *Justinians* Institutes. But this *Britton*, that composed this Treatise, Mr. *Selden* in his Notes upon *Forteſcue*, denies to be the Bishop of *Hereford*, but a Judge of that name about that time; which is more probable. Whoever it was, 'tis certain he was of a great and profound Judgement in the Common Laws, and his Book is accordingly learnedly and methodically written. Though some Points of his Law are now obsolete and out of date; which made *Montague*, chief Justice, say, That his Book contains many errors. Pag. 130. Ployd. Com. 58. 2.

Fleta is likewise a work well written by some learned Lawyer, (saith the Lord *Cook*) who being committed to the *Fleet*, had leisure to compile it there; and therefore is called *Fleta*, by the name of the *Fleet*, concealing his own name. The Author thereof is unknown, but it appears by his Book, that he lived in the Reign of *E.* 2. and *E.* 3. *Vid. l.* 1.

c. 20. sect. Qui ceperunt. l. 2. c. 66. sect. Item quod nullus.

But these Books (saith Mr. *Fulbeck*) as it is not unprofitable to read, so to rely upon them is dangerous, for most of that which they give forth for Law, is now antiquated and abolished; their Books are *Monumenta adorandæ rubiginis*, of more Reverence then Authority. Their works are rather matter of curiosity, then of progression and proficience, and tend rather to augment the mass of Learning in learned men, then to rectifie and raise it: which made Justice *Periam* in *Zouch* and *Bamfield*'s case, *Leonard*'s Reports calls them, *Actores non Authores Leges.*

Fortescue de laudibus legum Angliæ, written in the Reign of *H. 6.* in commendation of the Laws of *England*, containing withall much excellent matter worthy the reading. He sheweth herein a sharp judgment, and herein he is exquisite and artificial, that where he endeavoureth to be plain, he spareth not

to

to be profound To the laſt Edition of this Book is added Mr. *Selden's* Notes upon him, containing both antient and curious learning.

Statham's Abridgement, publiſhed in the Reign of *H. 6.* by *Statham*, a learned Lawyer of that time. A Book (ſaith the Lord *Cook*) well contrived, and of great uſe.

Littleton's Teneres is a Book of ſound and exquiſite Learning, comprehending much of the marrow of the Common Law. Of this Book, ſaith the Lord *Cook*, *Hottoman*, a Civilian and Canoniſt, in his Commentary, *De verbis feudalibus, verbo feudum*, giveth his cenſure, with what charity or diſcretion, judge, learned Reader. *Stephanus Paſſaverius* (ſaith he) *excellenti viro ingenio, &c. libellum mihi Anglicanum Littletonum dedit, quo feudorum Anglicanorum jura exponuntur; ita incondite, abſurde, & inconcinne ſcriptum, ut facile apparet verum eſſe, quod Polydorus Virgilius in Anglicana hiſtoria ſcribit, Stultitiam in*

eo

eo libro cum malitia & calumniandi ſtudio certare. Of *Hottoman* and his Author, I may juſtly ſay, and will ſay no more, *Volentes eſſe legis doctores, non intelligentes, neq; quæ loquuntur, neque de quibus affirmant.* And therefore let us leave them amongſt the number of thoſe, *Qui vituperant quæ ignorant.* For the Civilians, Their pages are ſo full of palpable errors, and groſs miſtakings, as theſe new Authors are out of our charity pitied, and their Books out of our Judgement caſt away unanſwered. Alas, our Books of Law ſeem to them to be dark and obſcure, but no wiſe man will impute it to the Laws, but to their Ignorance, who, by their ſole and ſuperficial reading, cannot underſtand the depth of them. And for *Littleton's* Tenures, I affirm it againſt all Oppoſites whatſoever, that it is a work of as abſolute perfection in his kind, and as free from errors, as any Book that I have known to be written of any humane Learning. Of him, a man of great Excellency in his Profeſſion, Mr. *Cam-*

Britt. fol. 174.

Mr. *Camden*, hath juſtly ſaid, that he was a famous Lawyer; to whoſe *Treatiſe of Tenures* (ſaith he) the Students of the Common Laws are no leſs beholding, then the Civilians to *Juſtinians Inſtitutes*. Therefore is it deſervedly ſaid, that *Littleton* is not only the name of a Lawyer, but of the Law it ſelf. I have cited him thus largely, that the worth of this Book may the better appear. *Montague*, chief Juſtice, ſaith of this Book, *Quæ eſt le verey & pluis ſure Regiſter del fundaments & principles de noſtre ley*. *Vide* the Epiſtle to the Lord *Cooks* Commentary upon him. Ployd. Comment. 58. b.

Fitz-Herbert's Abirdgement is a Book painfully and elaborately collected; and he hath well contrived that which was confuſedly mingled together in ſo many Year-books. His *Natura Brevium* is likewiſe an exact Book, exquiſitely penned, very uſefull and profitable for direction and knowledge of our Student in the nature and gift of Writs, which is a matter of great importance, for it

it is the foundation of all the proceedings in Law; and *debile fundamentum, fallit opus.* He hath likewise a Treatise of Justices of the Peace, but found fault withal by the Judges when published, saith the Lord *Cook*, for that he therein affirmed, That Justices of the Peace having by their Commission authority to hear and determine Felonies, &c. could not hear and determine murder, which amongst others they clearly over-ruled, that Justices of the Peace might lawfully do.

Doctor and Student, written by St. *Germine*, a learned and discreet man, and well read both in the Common, Civil and Canon Laws, as the Lord *Cook* affirms: of him *Bale* saith, *Christopherus Segni armine, alias de Sancto Germano, illustri prosapia oriundus, socius olim interioris templi in Suburbiis Londinensibus, e eruditionis illic pervenit, ut ab eius urbis civibus immortalem sit assecutus famam. Homo erat omnium consensu in patriis legibus, & in jure tam Canonico quam Civili, excellenter instructus, in omni*

ni q; Philoſophia, at q; ſcientiis aliis liberalibus doctiſſimus evaſit. Quam facundum, amplum ac magnificum habuerit ingenium, & quam gravem in rebus agendis prudentiam, tota nimirum Anglia novit. [*Chriſtopher* St. *Germine* (ſaith he) riſen of an illuſtrious Stock, formerly of the Society of the *Inner Temple* in the Suburbs of *London*, arrived at that height of Learning, that from the Inhabitants of that City he got immortal praiſe. He was a man, by the conſent of all, excellently learned, both in the Laws of his own Country, as alſo the Canon and Civil Laws: very learned likewiſe in Philoſophy, & the other Liberal Sciences. What a copious and large wit he had, and what gravity and prudence in his actions, all *England* knew.] It is a Book very profitable for the knowledge of the Nature, Grounds and Diverſity of Laws, eſpecially the Grounds and Reaſons of the Laws of *England*.

Mr. *Stamford's* Book containeth two parts; One, of the Pleas of the Crown;

Crown; the Other, of the King's Prerogative. In him (ſaith Mr. *Fulbeck*) there is force and weight, and no common kind of Stile: in Matter very few have gone beyond him, in Method none have overtaken him; in the order of his Writing he is ſmooth, yet ſharp; pleaſant, and yet grave. And ſurely his Method may be a Law to the Writers of the Law that ſucceed him.

Raſtal's Book of Entries is a Book tending very much to the eaſe and furtherance of the Profeſſors of the Law.

The Lord *Brook*'s Abridgement was gathered firſt for his private Uſe, and publiſhed long after his Deceaſe. A worthy and painful Work; and, as the Lord *Cook* ſaith, an excellent Repertory of the Year-books of the Law. And herein he is more compendious then *Fitz-Herbert*, who, in a brief manner gives the Reaſons on either ſide, but *Brook* delivers onely the point adjudged; and where it is doubtful, and no Judgement given, his own Opinion. And Mr. *Fulbeck* ſaith,

ſaith, That where *Fitz-Herbert* is underſtood, he profiteth more, and his Abridgement hath more Sinews, though the other hath more Veins.

In Mr. *Perkins* are many commendable things, delivered by a ready Conceit, and a pleaſant Method. Many excellent Caſes which ſavour of great Reading, and good Experience.

Mr. *Theobal*'s Digeſt of Writs, is a very ſound and painful Book: For ſaith Mr. *Fulbeck*, in handling one Title of the Law, he hath dealt ſo painfully, that no point can be named concerning that Title which he hath not diſcuſſed; nay, to give him right, hath not fully diſcuſſed.

Mr. *Plowden*'s Commentaries conſiſts of two Parts, both of them learnedly and curiouſly publiſhed. Works (as they well deſerve) with all the Profeſſors of the Law, of high accompt. The Author whereof (ſaith the Lord *Cook*) was an ancient Apprentice of the Law, of great Gravity, Knowledge and Integrity. It is a Work full of Argument, and plainneſs of Proof. The

The Lord *Dyer*'s Reports, containing the fruitful and ſummary Collections of the Reverend Judge, Sir *James Dyer* Knight, Chief Juſtice of the Court of Common-pleas, for his private uſe and remembrance, were as he left them imprinted after his deceaſe: a work full of pleaſure, diverſity and deep learning.

Maſter *Lambard*'s Pains, Learning and Law, appear by his Books, (ſaith the ſame Mr. *Fulbeck*) and are conducted by ſo curious a method, and beautified with ſuch flowers of Learning, that he may well be ſorted amongſt them to whom the Law is moſt beholden. His Stile runneth like a temperate Stream; his excellent knowledge and uſe of Antiquities, as his Saxon Laws, argue no ſmall Reading, and a ſingular Conceit. Of his *Juſtice of the Peace*, the Lord *Cook* ſaith, *Maſter* Lambard's *Collection of the Office of the Juſtices of the Peace, methodically written, was publiſhed towards the end of the Reign of Queen* Elizabeth. In this Book, though briefly, yet he fully handleth the ſubject-matter. Mr.

Mr. *Crompton's* Books (ſaith Mr. *Fulbeck*) are the products of Induſtry, eſpecially the *Juriſdiction of Courts*: they are ſo compendiouſly collected, that a man by a few hours peruſal of them may gain great knowledge.

The Lord *Cook's* works, that is to ſay, his *Inſtitutes*, containing his *Commentary upon Littleton*, his *Expoſition of Magna Charta*, and other ancient Statutes, his *Pleas of the Crown*, and *Juriſdiction of Courts*, his *Books of Entry* and *Reports* ſhew no leſs induſtry then a ſingular good method, and profound judgment. Books that very well deſerve the name of Pillars of the Law. And as once it was ſaid of *Virgil*, that if all the Sciences had been loſt, yet might they have been found in his Books; ſo certainly it may be ſaid (and more truly) of his works, That if the Theory of the Law had been loſt, it might eaſily have been found therein. His *Reports* contain ſuch diverſity of matter, and that ſo profound and fundamental, that whoſoever is

verſed

verſed in them, can do no leſs then make a ſound Lawyer. A man he was of ſuch a moderate ſpirit, (well becomming his Motto, *Prudens qui Patiens*) that he weighed the Balance ſo juſtly between the Soveraigns Prerogative and the Subjects Priviledge, that each party challenge him for their own. To ſay more of him, were to ſay too little, and put an Affront upon the World, to ſuppoſe they neither knew him nor his Works.

Crook's Reports, and that worthily, ought to be named in the next place, whereof there are two Volumes extant, and a third promiſed. Reports of as good matter, and artificial brevity, as any extant; yet ſo full, that ſcarce any thing worthy of note is omitted; eſpecially the ſecond part, containing more matter of Law, then thoſe that are of thrice the bulk; and are the rather to be eſteemed much of, becauſe they are the products of Critical Times. The Certificate of the Judges in that behalf, is ſufficient to manifeſt of what worth thoſe Books are. The

The Reports of the Lords, *Popham* and *Hobart*, both Chief Juſtices in their reſpective places, contain matter profound, yet with convenient brevity: Works of great Authority and Uſe. Of Sir *Henry Hobart*, Juſtice *Cook* hath this *Encomium*, That *he was a moſt learned, prudent, grave and religious Judge.*

The like may be ſaid of the Reports of *Owen*, *Hutton* and *Winch*, Juſtices formerly of the Common Pleas, being very ſinewie, containing almoſt as much matter as words; very conciſe and pithy, pleaſant and profitable for reading; no ways either difficult to the Apprehenſion, or burthenſome to the Memory.

Sir *Thomas Hetley's* Reports are likewiſe profitable for Reading, he being one ſet apart for that purpoſe.

Mr. *Brounlow's* Reports are very pithy, containing both good and various matter, and therefore are ſafely concluded uſeful.

Mr. *Leonard's* Reports publiſhed by Mr. *Hughs*, contain, as himſelf ſaith, many excellent matters and points

Points of Law, and have been approved by the peruſal of learned perſons in their courſe of practice.

Mr. *Bulſtrode's Reports*, whereof there are three parts, ſhew no little pains, wherein he hath followed Mr. *Plowden's* manner of Reporting, by fulneſs of Argument, and plain kind of Proof, learnedly compoſed; the peruſal whereof will very much improve our Student's knowledge.

The Reports of Sir *James Lea*, Sir *John Bridgman*, Mr. *Lane*, Mr. *March*, and Mr. *Styles*, all lately publiſhed, are likewiſe to be numbred among thoſe, wherewith our Student ought to be furniſhed.

And above all, he is to be well ſtudied in thoſe *Repoſitoria Juris*, the Year-books, and Terms, or Annals of the Law; Books, as Mr. *Plowden* ſaith, collected by four able men, appointed for that purpoſe, who yearly received ſtipends from the King for their reward, and conferred all together at the making and ſetting forth of their Reports. Theſe Reports

begin

begin with the Reign of *E.* 3. (though there are found broken Cases of elder times ſcatter'd in the Abridgments ſince the time of *H.* 3.) and they are theſe, The Yearbooks of *E.* 3. of *H.* 4. of *H.* 5. *H.* 6 *E.* 4. *E.* 5. *R.* 3. *H.* 7. *H* 8. And theſe are of greateſt uſe and authority; for *out of theſe old Fields* (ſaith the Lord-*Cook*) *ſprings the new Corn.* The Judges of thoſe times were very learned men in all ſorts of Science, as eaſily appears by the Books, containing deep points of knowledge.

And as for the Abridgments, though they are of great uſe, yet as the ſame Lord *Cook* ſaith, *Compendia ſunt diſpendia*, Abridgements in ſome Caſes miſtaking the ſtate and truth of the Queſtion, and ſometimes the right reaſon and rule of the caſe utterly miſtaken. Therefore *Satius eſt petere fontes quam ſectari rivulos*; it is better and ſafer ſailing in the main Sea, then in rocky Rivers. When the whole Caſe is ſet down at large, with all the circ-

ſtances

cumſtances and Reaſons of either ſide, the Point in queſtion is eaſily apprehended, and many Rules of Law collected by Inference, which out of an abridged Caſe cannot be done; and conſequently the pleaſanter for reading, according to that of the Poet,

Dulcius ex ipſo fonte bibuntur aquæ.

The *Book of Aſſize* is a Book of great authority in Law, and is ſo called, becauſe it containeth principally Proceedings upon Writs of *Novel diſſeizin*, *Litt.* 198.

Juſtice *Yelverton's Reports*, lately publiſhed in the Lawyer's own Dialect (I mean the French) contains matter worthy ſuch a grave Judge, and learned Publiſhers.

The *Statutes at Large* are likewiſe very neceſſary for our Student, that when he meets any Caſe upon the Statutes, he may turn to that Statute, and peruſe the ſame, and ſo the better underſtand the Caſe, and Reaſons thereof. And

And what other Reports there are extant, though perhaps they are not of great Authority, yet certainly will they give great Information in matters of Law, to thoſe that peruſe them. Nevertheleſs the Reader ought to be wary, and weigh what he reads before he ſubject his Opinion, leſt they obtrude upon him any Opinion contrary to Law. For, ſaith the Lord *Cook*, *I like not thoſe that ſtuff their mindes with wandering and maſterleſs Reports, for they ſhall finde them too ſoon to lead them to error.*

And here our Student hath a Catalogue of all, or moſt of the Books requiſite for the Study, which are about fifty in number, not very many nor great, moſt of them being but of ſmall bulk or Volumes, therefore not ſo great labour to read over, as may not be compaſſed in a conſiderable time. And herein are we happy, that we are not troubled with the many and vaſt Volumes written of the Civil Law; whoſe Profeſſors confeſs, that their Law is a Sea full of Waves, the Text whereof being

digeſted into ſo many Volumes, and ſo many Doctors interpreting the Text and twice as many more Commenting upon their Interpretations, and ſo Gloſs upon Gloſs, and Book upon Book, and every Doctors Opinion being good Authority, fit to be vouched among them, muſt needs breed diſtraction of Opinions, and uncertainty in that Law. The like may be ſaid of the Canon-Law, albeit the Text thereof be ſcarce four hundred years old. And ſaith one, *If* Littleton *had been an Author in the Civil or Canon-Law, I dare ſay there had been by this time ſo many Comments and Gloſſes made upon him, as the Bookes written upon this Book onely, would have been more in number, than all the Volumes of our Law at this day.*

Sir J. Davies in prefat. ad relat.

And our Student ought to be furniſhed with the whole courſe of the Law: all theſe Books, ſaith the Lord *Cook*, are not only for his ſet reading, but that alſo, when Caſes are argued, and theſe Books cited, he may turn to the ſeveral places, and

ſee

ſee how they make for or againſt the Point in queſtion. And probably ſuch Caſes, which in the Books he cannot well underſtand, the very Point in queſtion, for which purpoſe they are cited, may ſerve him inſtead of a Gloſs thereupon. But *Caveat ſtudioſus*, that he do not ſo apply himſelf to theſe, ſo as to neglect his ſet and conſtant courſe of reading.

CHAP. IV.

The Method of Study.

THe Law is a Labyrinth, and certainly, if there be any, Method is that *Ariadne*'s Clew that muſt lead us out of it. By Method I mean that Syntax and Diſpoſition of Studies, whereby we know in what order to purſue the ſame. Without this, be our Parts never ſo excellent, and Endeavors never ſo inforced, yet are they of little worth: for we cannot attain any great meaſure or clearneſs of knowledge. This Art of Method will ſupply many defects; and *Claudus in via antevertit curſorem extra viam*: A man, though lame, in the right way, will eaſily out-run the nimbleſt, if he miſtake his Race. He that goes to work methodically, ſhall ſooner compaſs the Circle of this Study, than he that uſes no Method

can

can croſs the Diameter. Therefore *Galen* well underſtanding of how great Importance it was to ſtudy Matters with Order and Method, writ a Book, to teach the Manner that was to be held in Reading his Works, to the end his Readers might not be tangled in confuſion. And as the Lord *Cook* ſaith, *The uncertainty of the Law, and the inſufficiency of the Profeſſors, doth ariſe out of that* Præpoſtera lectio, *the confuſed reading, that moſt uſe in their Studies.* In order therefore to our Students greater Proficiency herein, in reading he muſt obſerve the Lord *Bacons* Rule, to begin with the eaſieſt, and ſo to proceed to the more difficult; to begin with the Terms of Art, and then to the Matter. For the Terms, *Cowel's Interpreter, and Raſtal's Terms of the Law*; and for both, the Lord *Cook*'s *Commentaries*; and of them, that upon *Littleton*, as he himſelf tells us, they are *Cunabula Legis*, [the Cradles of the Law] to be uſed in the beginning of this Study, and is the firſt Book our Student

ought to take in hand. Concerning which Book, he tells us his hope is, that the young Student, who heretofore meeting at the first, and wrestling with as difficult Terms and Matter, as in many years after, was at the first discouraged, (as many have been) may by reading those *Institutes* have the difficulties and darkness both of the Matter, and Terms or words of Art in the beginning of his Study facilitated and explained unto him, to the end he may proceed in his Sudy chearfully and with delight. In the reading whereof his Rules are these; That before he read any of the Commentary upon any Section, that first he read again and again the Author himself in that Section, and do his best indeavour, first of himself, and then by conference with others, (which is the life of Study) to understand it; and then to read the Commentary thereupon; and no more at any time, then he is able with delight to bear away. And albeit the Reader shall not at any one day

day (do he what he can) reach to the meaning of the Author or Commentary, yet let him no way diſcourage himſelf, but proceed; for on ſome other day, in ſome other place, that doubt will be cleared. And when our Student, by the reading of theſe and the like Explanatory Books, is enabled and armed to ſet upon the Years-books or Reports, he muſt begin with the lateſt, as being the fitteſt to ſeaſon our Students memory withal. Wherein the Controverted Points in the old Books, being left for Quæries, are reſolved, and Caſes more ſuiting with the complexion of the Commonwealth are upon ſolemn Arguments adjudged; and this is of great importance: for if he ſhould begin with the old Books, wherein many Points of Law are abſolute, and altered by late Statutes, and repugnant to daily experience, & many Circumſtances in matter of practice aboliſhed, our Student would be drawn away by their Authority, to the Lanes and by-paths of Errour, of which

he ſhould not ſuddenly rid himſelf.

Quo ſemel eſt imbuta recens ſervabit odorem,
Teſta diu———

And that is obſervable which Naturaliſts ſay, That the Memory is *Tabula raſa*, a plain Table, and as blank paper, wherein nothing is written; and that it is moſt retentive of thoſe Figures that are firſt impreſſed thereon: Therefore it behoves our Student to ſee that thoſe firſt Rudiments and Opinions he obtrudes by the authority of the Reporters upon his Judgement and Memory, be ſound and wholeſome Principles, thoſe being indeed the foundation of his Study. And, ſaith the Lord *Cook*, *For the moſt part, the latter Judgements and Reſolutions are the ſureſt, and therefore fitteſt to ſeaſon him withal in the beginning, both for ſetling of his Judgements, and retaining them in Memory.*

When our Student hath paſſed over

over the late Reports, the ſame Lord *Cook* injoyns him the reading of the ancient Year-books and Terms: *To the Reader*, ſaith he, *mine advice is, that in reading of theſe new Reports, he neglect not in any caſe the Reading of the old Books of Years, reported in former Ages: for aſſuredly (as is ſaid already) out of the old Fields muſt ſpring and grow the new Corn.* And that of *Macrobius* is very true; *Multa ignoramus quæ non laterent, ſi veterum lectio nobis eſſet familiaris:* [That if we were accuſtomed to the reading of the ancient Books, we ſhould not be ignorant of ſo many things,] eſpecially conſidering that hence is learned the Reaſon of the Law. And the reading of the Reports, of all other Books, is moſt beneficial; for they ſet open the Windows of the Law, to let in that gladſome light, whereby the right reaſon of the Rules (the beauty of the Law) may be clearly diſcerned; they broke the thick and hard ſhell, whereby with pleaſure and eaſe the ſweetneſs of

Macrob. l. 6. Saturnal.

the kernel of the ſeveral Caſes may be ſenſibly taſted; and adorned with variety of fruits both pleaſant and profitable, the ſtore-houſes of thoſe, by whom they were never planted nor watered.

And when our Student is well ſetled in Judgment in the Fundamental Points of the Law, it will be very neceſſary for him, not only for further Information, but alſo for Ornament, after the reading of theſe, to read over all the ancient Authors that have written of our Law; eſpecially if he aim to attain to the Knowledge of a compleat Lawyer. Lit. 249.b

For the well-ordering of his Study, he is to beware that he take not (eſpecially at the firſt) too high a ſtrain; for in a different Nature it diſcourages, in a confident it breeds an opinion of Facility, and ſo a ſloth and neglect; and in all Natures, a further expectation then can hold out, and ſo an inſatisfaction in the end. *Soft and fair, goes far*, ſaith the Proverb; and thoſe that are ſlow and deliberate in their Reading, are commonly

monly ſure in their Judgements. And thoſe that are uſed to ride poſt in their Studies, *omnia curſim & properantes tranſmittere*, (as *Seneca* ſaith) cannot attain any depth of Knowledge; for that of Learning is an involved intricate way: and certainly he had need be more deliberate then active, who in ſo ill Ground will make good haſte and good ſpeed together. *In labyrintho properantes ipſa velocitas implicat.* He is not the likeſt man to run out of a Maze, that runs faſteſt. And an over-nimble deſire, is like the Stomach of a ſick man newly recovered, more greedy then ſtrong, and fuller of Appetite then Digeſtion; whence ariſe immature and unconcocted Counſels, blind and unſetled Reſolutions. Nor on the other ſide too weak a ſtrain; for then he muſt not look to perform or overcome ſuch a great Task, but he muſt keep in a Mediocrity between both. He muſt read not to contradict and confute, nor to believe and take for granted, but to weigh and conſider; for ſlow-

neſs

nefs of Belief, and Diſtruſt, are the Sinews of Knowledge: Impatience of Doubt, and haſte in Aſſertion and Reſolution, without due and mature Suſpenſion of Judgement, are of dangerous conſequence; for he that begins with Certainties, ſhall end in Doubts; but if he be content to begin with Doubts, he ſhall end in Certainty. But herein he muſt avoid extreams, that on the one ſide he fall not into the vein of *Villeius* the Epicurean, of whom it is ſaid, *Nil tam metuens quam ne dubitare aliqua de re videretur:* [He feared nothing more then that he ſhould ſeem to make a doubt of any thing.] Nor on the other ſide into *Socrates* his *Ironical* doubting of all things, but to propound and receive things ſincerely, with more or leſs Aſſeveration and Credit, as they ſtand in his own Judgement proved more or leſs: to balance Reaſon on both ſides, and to turn back the firſt Offers and Conceits of the mind, & to accept of nothing but examined & tried. In other Sciences there is not ſo much heed

to

to be given as in this; for if in them he erres in Opinion, and winds his Thread upon a wrong Bottom, he commits no Crime only againſt Truth; but in this it doth not reſt within him; but if he be erroneous in his Opinions, he may be very injurious to the Common-wealth, both to the Lives and Eſtates of the People. Neither do I hereby intend that he ought not to labour to a certainty in all Points, even in thoſe that paſs for Doubts: according to *Littleton*,

Quæras de dubiis legem bene diſcere ſi vis,
Quærere dat ſapere, quæ ſunt legitima vere.

And the Lord *Bacon* reckons it a great fault peculiar to Lawyers and Scholars, that when a Doubt is once received, they labour rather how to keep it a Doubt ſtill, then how to ſolve it, and accordingly bend their Wits: *Of this* (ſaith he) *we ſee familiar Examples in Lawyers and Scholars,*

Scholars, *both which if they have once admitted a Doubt, it goeth ever after authorized for a Doubt.* And if in Points of difficulty Reason be so equally divided, that it is beyond his Decision, let him (as it is said already) suspend his Judgement till some other time and place make it clear unto him. Nor must he think at the first incounter to resolve all Doubts, and reconcile all seeming Contrarieties: for he must observe that the Knowledge of the Law is a very deep Well, out of which each man draweth according to the strength of his Understanding; he that reacheth deepest, (maketh the greatest progress therein) seeth the amiable and admirable Secrets of the Law, wherein the Sages of the Law in former times had the deepest reach. And as the Bucket in the depth is easily drawn to the uppermost part of the water, for, *Nullum elementum in suo proprio loco est grave*; but take it from the water, and it cannot be drawn up but with great difficulty: So albeit in the beginning of this

Litt. Com. 56. a.

this ſtudy theſe things ſeem difficult, yet when the Student can dive into the depth (I do not ſay bottome) it is delightful, eaſie, and without any heavy burthen, ſo long as he keeps himſelf in his own proper Element, that is, his Profeſſion. Yet ſome adviſe, that the Student upon the firſt onſet of a Book, ſhould read it over curſorily, eſpecially if of difficulty, as a Preparatory to a more ſerious and deliberate peruſal, that upon his ſecond Incounter, there be nothing left for his inquirie, but thoſe things that are difficult and weighty. However, in every Caſe he muſt obſerve three things; firſt, the matter of Law reſolved, and that not only the Point in queſtion, but alſo ſuch Rules as by Inference may be deduced thence, which may ſuffice hereafter for his furniſhing in the way of practiſe: for he cannot expect to find every Doubt reſolved *in terminis*. By ſuch Rules I mean the Reaſons of every Reſolution in any Book-caſe, being reduced into ſhort Sentences, Propoſitions, or ſumma-

ry

Lib. 1. regulis juris.

dery Concluſions. *Quoniam brevitas plurimum delectat, & quæ compendioſe traduntur tum : addiſcantur facilius tum diutius retinentur, univerſa legis ſententia in epitomen ſive ſummam redigenda eſt.* And all Rules drawn out of the Law are of two ſorts, either being a Rule drawn from the Reaſon of the Caſe, or the Caſe it ſelf ſhortly contracted.

For the firſt, **A man hath for him and his Heirs the Nomination of a Clarke for a Church to an Abbot, and the Abbot ought to preſent over the Clarke nominated, to the Ordinary. Now the King having the poſſeſſion of the Abbie, preſented his Clarke to the Church being void, without any Nomination. And the Opinion of the Court was, That the Party which had the Nomination ſhall have a Quare Impedit only againſt the Incumbent, without naming any Patron.**

Whence may be drawn theſe Rules and Reaſons.

1. That

1. That the King cannot be ſued as a Diſturber.

2. That where the King preſents by wrong, the *Quare Impedit* ſhall be onely againſt the Incumbent, without any Patron named.

3. The King cannot be an Inſtrument to any man as his ſervant.

4. By the King every Subject hath Juſtice done him. See *Dyer* 33. *H.* 8. 48.

Tenant in tail of a Mannor, to which Villaines are regardant, infeoffed one of the Villaines of one Acre parcel of the Mannor, and dies: albeit the Mannor deſcends to the Iſſue in tail, yet he cannot ſeize his Villain till the Acre be recovered.

Whence flow theſe Propoſitions.

1. That when a man hath one thing by reaſon of another, there he ſhall have no benefit of the Acceſſary till the Principal be recovered.

2. Regardancy or Appendancy is not onely to the whole Mannor, but to every Acre of the Demeanes.

3. A

3. A neceſſary Suit had by the Lord againſt his Villain, doth not infranchiſe him. Although none of theſe Propoſitions be expreſſed in the Caſe, yet are they neceſſarily implied and drawn thence by Inference. And moſt commonly the Point reſolved is not the tithe of the Law in the Caſe, as in the Commentaries in *Reingier* and *Fogoſſa*'s Caſe, the Point being only this, **Whether a conditional Agrément were an Agrément within the Statute of** And there we have theſe Points; That a Concord Executory is no bar in Treſpaſs, becauſe it doth not ſound in ſatisfaction, *fol.* 5. *a.* That where a Deed is pleaded, it muſt be ſhewn in Court, that the Court may judge of its validity. 7. *b.* That to plead new matter ſubſequent to the Bar, is a Departure. 8. *a.* That it is not neceſſary to aver that, which of neceſſity muſt be intended. 8. *b.* That the Law puniſheth not where there is a neceſſity for the doing of it. 9. *b.* That Statutes, although penal, ſhall be conſtrued according

according to the intent of the Makers. 10. *a.* And many more, which for brevity ſake I omit.

For the ſecond ſort of Rules, the Caſe contracted, as for Inſtance: That long Caſe of the Lady *Hales* and *Pettite* in the Commentaries, may be drawn to this ſhort Rule; **That if a Leaſe be made to two jointly for Years, and one is felo de ſe, it ſhall not go to the other by Survivourſhip, but is forfeited to the King.** Ployd. 257. b.

The ſecond thing to be obſerved is, the reaſon of the Law, and reſolution of the Caſe. For Reaſon is the life of the Law, and the Common Law it ſelf is nothing elſe but Reaſon; which is not to be underſtood (ſaith the Lord *Cook*) of every Mans natural Reaſon, for, *Nemo nacitur artifex*, but an artificial perfection of Reaſon; and this legal Reaſon is *ſumma ratio*, and therefore if all the Reaſons that is diſperſed into ſo many heads were united into one, yet could he not make ſuch a Law as the Law of *England*

England is, because by many successions of Ages it hath been fined and refined by an infinite number of grave and learned Men, and by long experience grown to such a perfection for the Government of this Realm, as the old Rule may be justly verified of it, *Neminem oportet esse sapientiorem legibus.* And the same Author saith, that *Ratio est anima legis*, [Reason is the Soul of the Law] for then we are said to know the Law, when we apprehend the Reason of the Law, that is, when we bring the Reason of the Law so to our own Reason, that we perfectly understand it as our own; and then, and never before, we have an excellent and an inseparable property and ownership therein, as we can neither lose it, nor any man take it from us; and will direct us very much, the learning of the Law being chained together in many other Cases. But if by his Study and Industry, he makes not the Reason of the Law his own, it is not possible for him long to retain it in memory: for

(saith

(ſaith the Lord *Cook*) *The reaſon of the Law is the life of the Law: for though a man can tell the Law, yet if he know not the Reaſon thereof, he ſhall ſoon forget his ſuperficial Knowledge; but when he findeth the right Reaſon of the Law; and ſo bringeth it to his natural Reaſon, that he comprehendeth it as his own, this will not onely ſerve him for the underſtanding of the particular Caſe, but of many other;* for Cognitio legis eſt copulata & complicata, *and this Knowledge will long remain with him.* 1 Inſt. 183. b.

The next thing to be obſerved in reading, is, the manner of Pleading. For, ſaith the Lord *Cook*, *It is a neceſſary part of a Lawyer to be a good Prothonotary.* And this is not without praiſe: For, ſaith *Littleton*, *It is one of the moſt honourable, laudable, and profitable things in our Law, to have the Science of good pleading in Actions real and perſonal.* And his Counſel is to the Student, his *filius Artis*, to employ his courage and care to attain the ſame; which Litt 304. a

his

his Commentary saith, is obtained three manner of ways.

1. By Reading. 2. By Observation. 3. By Use and Exercise: *For in ancient times* (saith he) *the Serjeants and Apprentices of Law, did draw their own pleadings, which made them good Pleaders.*

Many a good Cause is daily lost, and infinitely delayed, for want of good and orderly pleading; which if it were suffered to be done according to every mans fancy, it would bring all into confusion; for in the pleadings are most visibly discerned the Reasons of the Law. Though in the Reign of *E.* 2. *E.* 1. and upwards, the Pleadings were plain and sensible, but nothing curious, having chief regard to the Matter, and not to Forms, which were often holpen with a *Quæsitum est*, and the Questions moved by the Court, and the Answers of the Parties, were also entred in the Roll. But the Judges finding the inconvenience that was like to ensue, in the Reign of *E.* 3. Pleadings grew to perfection, both without

Litt. 304. b

without lamneſs and curioſity: for then the Judges and Profeſſors of the Law were excellently learned, and therefore ſaid Juſtice *Thorning* in H. 4. that in the time of *E.* 3. the Law was in a higher degree then it had been at any time before; for (ſaith he) before that time the manner of Pleading was but feeble in compariſon of that it was afterwards in the Reign of the ſame King. And in the time of *H.* 6. the Judges gave a quicker ear to Exceptions to Pleadings, then their Predeceſſors formerly did, or their Succeſſors ſince have done.

In the next place, he muſt in his courſe of Reading obſerve the Affections of the Law: As, that it favours Life, Liberty, and Dower; and that it hates private Cuſtoms, and Force, according to that of *Cicero*, *Nihil eſt exitioſus Civitatibus, nihil tam contrarium juri & legibus, nihil minus civile & humanum, quam in compoſita & conſtituta Republica quicquid agi per vim.* [Nothing is more deſtructive to a City, nothing

thing ſo contrary to Laws and Right, nothing more uncivil and inhumane, than in an orderly and well contrived Commonwealth any thing to be done by force.]

He muſt likewiſe bring his Underſtanding anſwerable to the intention of the Law, and to this purpoſe often to conſider the Fictions of the Law; which (ſaith Mr. *Fulbeck*) the Common Law of *England* doth ſhew wonderful ſharpneſs in, and a moſt excellent ſubtilizing things, whereof common ſenſe hath but a confuſed knowledge. As, **that a Term and a Freehold of the ſelf ſame thing, may be both in one Man at one time.** As, if Tenant for Years die, having made his Executor, and he purchaſe the Reverſion, here both the Term and Fee-ſimple are in the Executor, to ſeveral purpoſes. So of a Remitter to Land to ſome intent, but not to another: As, **if Tenant in tail diſcontinue, and his Son and Heir apparent diſſeizeth the Diſcontinuee to the uſe of the Father, the Tenant in**

Prepar. pag 45.

43 E. 3. 27

21 E 4. 21

tail

tail dieth, the Son is in his Remitter against all but onely the discontinuee. That a title may be executed to one intent, yet not to another. That a thing may be extinct and in esse at one time, in divers respects. That if the Disseizee come upon the Land at the request of the Disseizor, without any more, it is no Entry; and many such like.

He must likewise carefully observe the diversities and differences of Points and Matters of Law; for these are the surest Weapons a Lawyer is to be armed withal. For instance: It is true that the Ordinary hath power of placing and displacing of Seats and Isles in a Church. But with this Diversity, That where an Inhabitant and his Ancestors onely, have used time out of minde to repair an Isle in the Church, to sit there with his Family, and to hear Divine Service, and to bury there, this makes the Isle proper and peculiar to his house, and he cannot be displaced Crook pag. 367.

by the Ordinary. But conſtant ſittting and burying there, without uſing to repair, doth not give any Property: but the Ordinary may appoint whom he pleaſeth to ſit there.

Ployd. Comment 37. b. So if a Leaſe for yeares be made reſerving Rent, and for non-payment a Forfeiture of the Term, there is a Diverſitie. If the Proviſo in the Leaſe be, that if the Rent be behind, the Leſſor ſhall reenter, there Entry is requiſite, and before Entry the Leaſe is good: but if the words be, that the Leaſe ſhall be void, there Entry is not requiſite; for it cannot be made good by any after-Act. Raſure of a Deed by the party, though in a place not material, makes the Deed void. But with this Diverſitie (ſaith 1 Croke. Juſtice *Berkley*) If a Leſſee for yeares raze his Leaſe in a place not materiall, it makes the Deed void, ſo that the Leſſee can take no advantage of any Covenant, &c. of the Leſſor in the ſame Deed; but the Deed is not void as to the Eſtate: for notwithſtanding ſuch

raſure

raſure, the Eſtate is good. This indeed is an ingenious diverſity; but *quere*, whether according to Law, for Juſtice *Cock* doubteth thereof.

He muſt likewiſe conſider the ends of the Law. *Inventæ ſunt Leges ad ſalutem Civium, civitatumque incolumitatem, vitamque hominum & quietam & beatam.* [The Lawes, ſaith *Cicero*, were invented for the preſervation and ſafety both of City and People, that they may live a quiet and happy life.] The end of the Law is to ſettle and maintain Property, and alſo to preſerve the Perſons as well as the Eſtates of Men, and to diſpoſe every thing for the good of the Common-wealth. And therefore favours thoſe things that are done for the good of the Common-wealth. As, **if a man kill a Felon in purſuit, if he cannot otherwiſe take him, is not criminal; ſo he may kill in defence of his perſon, or goods, as if one attempt to rob him.** On the other ſide, it hates things that are deſtructive to the Common-wealth in a

Cicero de leg. l. 4.

more eſpecial manner; as all publick Wrongs, Monopolies, and the like.

In a word, he muſt paſs by nothing that is worthy the obſervation. As definitions of things, the placing of words in Deeds, and Wills, and the like; the latitude and extent of thoſe words, as alſo their omiſſion and addition. For, ſaith the Lord *Cook*, *There is nothing, ſeem it never ſo uſeleſs, but will ſtand our Student in ſtead ſome time or other.*

Prepar. c 4 Mr. *Fulbeck*'s Rules to be obſerved by our Student, are theſe.

1. That in the underſtanding of the Law, he muſt not vary nor depart from the proper ſenſe and ſignification of the words, unleſs thereby ſome Abſurdity, Inconvenience, or Injuſtice may appear.

2. That where the Law is obſcure, that ſenſe muſt be taken which is leaſt prejudicial.

3. That when Opinions are repugnant, it is the ſafeſt way to follow that Opinion which is moſt agreeable to Reaſon.

4. That

4. That the beſt Interpreter of the Law, is common Reaſon and Intendment.

5. That things which be odious in Law, muſt be reſtrained, and the things which be favorable enlarged.

6. That when a thing is forbidden, all things that follow thereof are likewiſe forbidden.

7. The validity of an Act muſt be ſpecially favoured, unleſs there be manifeſt nullity in the proceedings. But theſe indeed are rather Rules of Law than Study, yet certainly worthy of our Students conſideration.

In Reading, our Student muſt not give himſelf over to ſuch Books as are beſides his ſtudy, much leſs that conduce nothing to it. He muſt not be at one Book to day, and another to morrow, wandring like a ſickly Stomach, that hath an Appetite to all things, but can digeſt none. *Nuſquam eſt qui ubique eſt.* [He that is every where is no where.] And if fickleneſs weary him from one Book to another, let him follow *Seneca*'s Advice; *Probatos utique libros ſem-*

per lege, & ſiquando ad alios divertere libet, ad priores redi. [Read alwayes approved Authors; and if thou be minded at any time to change them, be ſure to return to the firſt,] to keep your ſelf alwayes within the Circle of approved Authors. Nor doe I deny any moderate uſe of other Books, ſo far as they ſerve to recreate a weary Minde, as certainly they are the beſt for that purpoſe, according to that of *Seneca*, (*Alit lectio ingenium, & ſtudio fatigatum, non tamen ſine ſtudio reficit.* [Reading nouriſheth the Underſtanding; and when it is wearied with ſtudy, yet is not refreſhed without ſtudy]) but no further. To turn Spie, but no In-mate. *In aliena caſtra tranſire*, (with the ſame Philoſopher) *non tanquam transfuga, ſed tanquam explorator.* And of ſuch, Hiſtories which demonſtrate the Government and Laws of Nations, are moſt advantagious for his peruſal, eſpecially the Chronicles of the Kings of *England*, and the Hiſtories of the particular Counties, which contain moſt

of

of the private Cuſtomes uſed in the ſame, which will give great light towards the underſtanding of the ancient Books of Law. For ſaith the Lord *Cook*, *Oftentimes, for the better underſtanding of our Books, the adviſed Reader muſt take light from Hiſtory and Chronicles, eſpecially from deſtinction of times.* Litt. Co 43. a.

The next thing our Student muſt obſerve in his courſe of ſtudy, is Writing. Reading muſt not be his only buſineſs, but he muſt put what he reads into writing. *Nec ſcribere tantum* (ſaith the Philoſopher) *nec tantum legere debemus: altera res contriſtabit, & vires exhauriet, de ſtilo dico, altera ſolvet ac diluet. Invicem hoc illo commutandum eſt, & alterum altero temperandum, ut quicquid lectione collectum eſt, ſtylus redigat in corpus.* [We ought not to write only nor read only: the one renders the Work ſad and melancholy, and doth exhauſt the Spirits, I mean Writing; the other doth looſen and diſſolve them. We muſt by turns change one with the other, and temper this Seneca

that; that whatsoever we have gotten by Reading, Writing may resolve into a body] And saith the Lord *Cook*, *Reading, Hearing, Conference, Meditation, and Recordation, are necessary to the knowledge of the Law, because it consisteth upon so many and almost infinite particulars.* But an orderly Observation in writing, is most necessary of them all; and he that at length by these means, shall attain to be learned, when he shall leave off quite for his gain or his ease, soon shall he (I warrant him) loose a great part of his learning, without orderly observation in writing. Our Student therefore must out of his Reading extract Aphorisms and Rules of Law; which manner is very advantagious to improve a mans knowledge. For first, it trieth whether he be superficial or solid; for Rules and Aphorisms, except they should be ridiculous, cannot be made but of the pyth and heart of Sciences; for discourse of illustration is cut off, Recitals of Examples are cut off, Description of practice is cut off: so

there

there remaineth nothing to fill the Rules and Aphorisms, but some good quantity of Observation. And out of these Aphorisms and Rules must he make a Common Place; for saith the Lord *Bacon*, *Pleaders should have the places whereof they have most use, ready handled in all the variety that may be.* And *Cicero* himself being broken into it by great experience, delivereth it plainly, That whatsoever a man shall have occasion to speak of, if he will take the pains, he may have it in effect premeditated and handled in these Common Places, so that when he cometh to a particular, he shall have nothing to do, but to put to names, times, and places, and other circumstances of individuals. And therefore the larger our Students Anticipation is, the more direct and compendious is his Search. And if upon every occasion a Practiser should be to look into the vast body of the Law for resolution, I doubt he may stay long enough without his errand. Therefore must this great Deep be

De Aug. Scient.

De Oratore.

drawn out into Rivulets, through which we may eaſily wade. *Ingens corpus ejus* (ſaith *Seneca*) *in membra diſponi debet.* This great body muſt be diſpoſed into Members or Parts; which being done, we may the eaſier attain the knowledge of the Law. And herein muſt we imitate the Bees, which gather from every Flower what is fit for their purpoſe, and then whatſoever they gather they diſpoſe and digeſt into Hives. *Apes debemus imitari, quæ ut vagantur & flores ad mel faciendum idoneos carpunt, deinde quicquid attulere diſponunt, ac per favos digerunt; Ita debemus quæcunque ex diverſa lectione congeſſimimus ſeparare: melius enim diſtincta ſervantur.* [So ſhould we do, that whatſoever we gather from diverſity of reading, we ſhould ſeparate: for being ſo digeſted and diſtinguiſhed, they are the better retained.] For the whole being (as it muſt) confuſedly read, if the matters be referred to their ſeveral places, are fitter for Conſideration and Meditation. *Quæ in univerſo confu-*

Sen. Ep.

confuſius videbantur, in partes diviſa diligentius conſiderantur. Et homines facilius per partes in cognitionem totius adducuntur. [What ſeem confuſed in general, being divided into parts are more diligently conſidered. And men are eaſieſt brought to the knowledge of the whole by the parts.] And Mr. *Fulbeck* ſaith, that as well for the Students eaſe, as for preſerving and continuing his Memory, it is a profitable courſe for him under Titles, to digeſt the Caſes of the Law, into which he may transferre ſuch things as he hears or reads: and other mens Abridgements are little available to ſuch as read little; but that which is got by our ſweat & labour, we do firmly retain, and in it we doe principally delight. Neither hath there been any Learned and Judicial Lawyer, who hath not made a Collection of his own. Therefore we may conclude, that Common Places are maters of great uſe and eſſence in ſtudy, as that which aſſureth Copy of Invention, and contracteth Judgement to

a

a ſtrength. And herein he muſt uſe a method, and analyſe the matter with all its parts and incidents. For Method carries a kinde of demonſtration in Orbe, or Circle, one part illuminating another. And Method conſiſteth moſt of Diviſion: and it helpeth our Student much to make good Diviſions; for he that divideth things aright, can never erre in the order of things. *Diviſio* (ſaith *Bracton*) *triplicem operatur effectum; primo enim animum legentis incitat, ſecundo mentem intelligentiæ præparat & recte artificioſe memoriam reformat.*

For the ordering of his Common Place: He muſt begin with the terms of Art, to imitate the wiſdome of the Mathematicians, in ſetting down in the very beginning the definition, or for want of that, a full deſcription of the Termes. Which being done, then to place the matter with the reſpective diviſions, under the ſeveral branches of the definition. And for our Students Inſtruction in his Definitions, I refer him to

Bacon de Aug. Scient.

to Sir *John Dodderidge*, who in his *English Lawyer* hath fully explained that Point. And if this order be followed, he may easily finde what he seeks for, without any tedious search. But, *Via longa per præcepta, per exempla brevis.* I will therefore, according to my small measure of knowledge, analyze *Littleton's* Chapter of *Dower*, with the Commentary, by way of such a Common Place. Which being most of it Expository, wants that diversity of Cases, which reading of the Year-books and Reports affords, and therefore cannot be drawn according to my Method into Rules and Aphorisms, nor do I take in the whole Matter, and all the Cases of the Chapter, but only one or two points under each Branch, to chalk out the form of such a Common Place. Seneca.

Dower is an Estate of Freehold during the life of a Lawful wife, appointed out of an Inheritance, whereof he is seised, which Estate beginneth upon and after

ter the Death of her Husband.

To begin with the Term. Dower is called *Dos* in Latine, *Ex donatione, & est quasi donarium*, because the Law it self, or the Husband of his own assent, giveth it to her. And this word *Dos* at this day is not taken for any thing the Wife brings with her in marriage to her Husband: for if Land, then it is called Frank-Marriage; if Money or other Goods, that is called her Marriage-portion. Although formerly *Dos Mulieris* was also applied to them. It is also called *Maritagium*.

I. Dower is an Estate of Freehold during Life.

Every one that hath an estate in any Lands or Tenements for term of life, is called Tenant of Freehold. But every Tenant of Freehold, so called, holds not for life; as Tenants by Statutes, Elegits, &c. are said to hold Lands, *Ut liberum Tenementum*, though their Estate is no longer then until their Debts be paid: but they

they have a Similitudinary Freehold, becauſe they have the ſame Actions with Tenant of Freehold.

II. Of a Lawful Wife.

Here three things are to be conſidered: that is to ſay,

1. Her Marriage.

Firſt, The Marriage, whether *de jure* or *de facto*, muſt continue: for, *Ubi nullum Matrimonium, ibi nulla Dos*; if the Marriage be Diſſolved or Diſcontinued, Dower ceaſeth.

1. The Marriage is diſſolved by divorce, which is either,
   1. *A vinculo Matrimonii*, for ſome cauſe before the Marrage, as Conſanguinity; and hereby Dower ceaſeth.

   Or,

   2. *A menſa & thoro*, for ſome cauſe ariſing after Marriage, as Adultery: by this Dower doth not ceaſe.

   But *Dower ad oſtium Eccleſiæ* is not hindred by either.
2. The Marriage is diſcontinued, if the Wife Elope from her Hus-

Husband until he be willingly reconciled to her.

Elopement is,

1. If she goeth willingly with or to the Avowtrer: this is a departure and a tarrying, albeit she remaineth not continually with the Avowtrer.
2. If she tarrieth with him against her will.
3. If the Avowtrer turn her away.
4. If she cohabit with her Husband by the censure of the Church.

Secondly, If the Marriage be *de facto* and not *de jure*, yet if the Wife be at age, and the Husband die before any Divorce, she shall be indowed.

2. Her Age.

The Wife must be of the age of nine years at the time of her Husbands death, and then shall be indowed, whatsoever age her Husband be of. For though *consensus*, and not *concubitus facit matrimonium*, and consent cannot be by a Woman

before

before twelve, or by a man before fourteen: yet it is *Legitimum Matrimonium quoad dotem.* And the Bishop upon Issue joyned in a Writ of Dower, *Quod nunquam fuerunt copulati legitimo Matrimonio*, ought to certifie that they were coupled in lawful Matrimony.

If a Man take a Wife of the age of seven years, and after alien his Lands, and the Wife attaineth to the age of nine years, and the Husband dies, the Wife shall be indowed.

3. Her Capacity.

An Alien shall not be indowed.

If a Man take an Alien to Wife, and after the Husband alien the Land, and after she is made Denizen, the Husband dieth, she shall not be indowed, because her Capacity to be indowed came by denization, after the alienation: but otherwise it is in case of naturalization.

If the King take an Alien to Wife and dieth, she shall be indowed by the Law of the Crown.

If a Free-man take a Neif to Wife, and dieth, she shall not be indowed.

If

If the Husband after Marriage alien the Land, and the Wife is attainted of Felony, now is she disabled; but if she be pardoned before the death of her Husband, she shall be indowed.

III. Appointed.

Dower is appointed three wayes 1. By the Act of Law. 2. By the Custome. 3. By the Act of the party.

Dower appointed by Act of Law, which is called, Dower at Common Law, is an estate of Freehold for the life of a lawful Wife, of the third part of all those Inheritances dowable, whereof the Husband was seized of an Estate of Inheritance during the Coverture, given by Law to be compleat after the death of her Husband.

This special description of Dower at Common Law, takes up all that of Dower in general; therefore waving that, I will prosecute what is additional in this. For the branches of the Difinitions are the same, and the Rules and Cases of that

fits

fits this: therefore what is ſaid already, I will not repeat but briefly.

I. Dower is an Eſtate of Freehold for the life of a lawful wife.

This is the ſame with the former Deſcription *in terminis*, therefore the Rules and Caſes that are comprehended under theſe Branches may be fetched thence. The difference is from theſe parts, of a third part, ſeized, given by Law; which being paſſed over, the reſt makes up the general deſcription.

II. Of the third part.

Of ſuch things as may be divided, the wife ſhall be indowed of a third part. But of Inheritances that be entire, whereof no diviſion can be made by metes and bounds, though the Woman cannot be indowed of the thing it ſelf, yet a Woman ſhall be indowed thereof in a ſpeciall manner. As of a Mill, a Woman ſhall not be indowed by metes and bounds, nor in Common with the Heir, but may be indowed of the third Toll-diſh, or *De integro molendino*

dino per quemlibet tres menſem; ſo of a Villain, every third daye work.

1. **Of all Inheritances dowable.**

A Woman ſhall be indowed of the third part of the profit of Stallage, Fayr, Office of the Marſhalſea, the keeping of a Park, Dove-houſe, Piſcary, of the third preſentation to an Advowſon, of the third part of the profits of Courts, Fines, Harriors, Tithes, *&c.*

But in ſome Caſes of Lands and Tenements which are diviſible, and which the Heir of the Husband ſhall inherit, yet the Wife ſhall not be indowed. As, if the Husband make a Leaſe for life of certain Lands, reſerving Rent to him and his Heirs, and he taketh Wife and dieth, the Wife ſhall not be indowed of the Reverſion, becauſe there is no ſeizin in deed, nor in Law of the Freehold, nor of the Rent, becauſe the Husband had but a particular Eſtate therein, and no Fee-ſimple.

If the Husband make a Gift in tail

ail reſerving Rent to him and his heirs, and after the Donor takes a Wife and dieth, the Wife ſhall be endowed of this Rent, becauſe it is a Rent in Fee, and by poſſibility may continue for ever.

Of a Common certain, a Woman ſhall be indowed, but not of a Common in groſs *ſans* number.

Of Rents Service, Charge, and Seck ſhe ſhall be indowed; but of an Annuity that chargeth only the Perſon, and iſſueth not out of Land, ſhe ſhall not be indowed.

A Woman ſhall not be indowed of a Caſtle, that is maintained for the neceſſary defence of the Realm, becauſe it is not to be divided: otherwiſe of a private Caſtle for the Habitation of the Owner.

Of the principal Manſion or capital Meſſuage the Wife ſhall be indowed, *Si non ſit caput Comitatus ſive Baroniæ*, for the honor of the Realm, or publick defence.

In every Caſe where a Woman taketh a Husband ſeized of ſuch an Eſtate in Lands or Tenements, ſo as

by

by possibility the Husbands Issue on her body begotten may inherit the same Tenements, as Heir to the Husband; of such Tenements she is dowable, otherwise not.

III. **Whereof the Husband.**

If the Husband be an Alien, the Wife shall not be indowed; so if the Husband be the Kings Villain, otherwise of the Villain of a private Person, if the Wife be intitled to Dower before the Entry of the Lord. So if the Husband be attainted of Treason done after the title of Dower, she shall not be indowed.

IV. **Was seized.**

If the Husband be seized in Deed or in Law, it sufficeth; but one of them he must be.

The Wife shall not be indowed of every Seizin in Law or in Deed. For if there be Grand-Father, Father, and Son, and the Grand-father seized of three Acres during the Coverture dies, the Father dies, the Wife of the Grand-father is indowed of one Acre and dieth, the Wife of the

Father

ather ſhall be indowed only of the wo Acres reſidue: for the Dower of he Grand-mothet is paramount the itle of the Wife of the Father, in aſe of Diſcent; otherwiſe in caſe of eoffment; as if the Grand-father ad infeoffed the ſame.

In that caſe, if the Fathers Wife be rſt indowed, it is otherwiſe. For if fter the deceaſe of the Grand-father and Father, the Son enters and ndows his Mother of a third part, gainſt whom the Grand-mother ecovereth a third part and dieth, the Mother ſhall enter again into the Acre recovered by the Grand-mother.

The Wife likewiſe ſhall not be ndowed of the Land given in Exhange, and the Land taken in Exhange; yet the Husband was ſeiſed f both: but ſhe may have her eletion.

Of a Seizin for an inſtant, a Woman likewiſe ſhall not be indowed: As if the Counſee of a Fine doth y the ſame Fine grant and render he Land to the Counſor, the Wife

of

of the Counſee, ſhall not be indowed.

If two Joyntenants be in Fee, and one make a Feoffment, his Wife ſhall not be endowed.

V. Of an Eſtate of Inheritance.

A Woman ſhall not be indowed of every Eſtate of Inheritance. For if Tenant in tail general make a Feoffment in Fee, and taketh back an Eſtate to him and his Wife, and to the Heirs of their two bodies, and they have Iſſue, and the Wife dieth the Husband taketh another Wife, and dieth, this Wife ſhall not be indowed: for during the Coverture he was ſeized of an Eſtate tail ſpecial.

So if in this Caſe he had taken back an Eſtate in Fee, and after had taken Wife and had Iſſue by her, yet ſhe ſhall not be indowed, for that the Fee-ſimple is vaniſhed by the Remitter, and her Iſſue hath the Land by force of the Intail.

VI. During the Coverture.

Seizin is not neceſſary to be continued

tinued during the Coverture, as Marriage muſt. For albeit the Husband Alien the Lands and Tenements, or extinguiſh the Rent or Common, yet the Woman ſhall be indowed.

VII. **Given by Law.**

Dower is a proviſion which the Law caſts upon the Woman without any act of hers, and is *præmium pudoris*, therefore favoured by that Law that gives it.

Tenants in Dower ought to be free from Tallage: Tenants in Dower ſhall not be diſtrained for debt due to the King by the Husband in his life time, in the Lands which ſhe holds in Dower. With many other Priviledges which the Law indulgeth to Tenants in Dower.

VIII. **To be compleat after the death of her Husband.**

Mortuo viro confirmatur dos,

[Death is the efficient cauſe of Dower.

It muſt be a natural, and not a civil Death. For if the Husband enter into Religion, yet the Wife

ſhall not be endowed until he be naturally dead.

IX. After the death of her Husband.

By the Statute of *Magna Charta* ſhe ſhall tarry in the chief houſe of the Husband by the ſpace of forty dayes after his death, within which time Dower ſhould be aſſigned her; and this is called a *Quarrentine*. But if the Wife marry within the forty dayes, ſhe looſeth her Dower.

The Aſſignment is either by the Sheriff, by the Kings Writ, or by the Heir by conſent: To which eight things are incident.

1. That it be certain.

2. It muſt be of ſome part of the Land whereof ſhe is dowable, or of a Rent or ſome other profit iſſuing out of the ſame.

3. The Aſſignment muſt be abſolute, and not conditional.

4. It muſt be made by him that is Tenant of the Land.

5. It muſt be without covin or colluſion.

6. An Aſſignment by a Diſſeizor with-

without covin, if not prejudicial to the Diſſeizee, is good.

7. It muſt be made by him that hath a Freehold, or againſt whom a Writ of Dower doth lie.

8. Before the Guardian in Chivalry enter, the Heir within age may aſſign Dower.

If no Aſſignment be made within the forty dayes, and the husband die ſeized, the Wife ſhall recover damages from the time of her Husbands deceaſe.

The VVife muſt demand her Dower, elſe *touts temps priſt* pleaded, will bar her of her Damages.

If iſſue be joyned upon the Husbands death, it ſhall be tried by Witneſſes, and not by a Jury.

2. **Dower by the Cuſtome.**

By the Cuſtome of ſome County the VVife ſhall have half of the Tenements which were her Husbands Inheritance during the eſpouſals. In ſome Towns and Burroughs ſhe hath all.

By the Cuſtome of Gavel-kinde, the VVife ſhall be indowed of the

moiety, so long as she keeps her self sole and without Child; which she cannot wave, and take her thirds for her life.

As a Custome may inlarge, so may it abridge Dower, and restrain it to a fourth part.

3. Dower appointed by the act of the Party.

1. *Dower ad ostium Ecclesiæ*, which is

Where a Man of full age seized in Fee-simple, being to be married at the Church-door, after assiance made between him and the Woman, indoweth her of some part of his Land and doth declare the quantity and certainty of the Land, which she shall have in Dower.

1. Where a Man of full age.

The *Husband* at the time of his indowment must be of full age, that is, of one and twenty.

But if he be under age, he may indow her by the assent of his Gu-

dia-

dian, and it ſhall be good, albeit the Husband die before his full age.

II. Seized in Fee-ſimple.

If Tenant in Tail indow his Wife at the Church-door, as is aforeſaid, this will nothing at all avail the wife: for after the deceaſe of her Husband the iſſue in Tail may enter upon her poſſeſſion; and for want of iſſue, he in the reverſion.

III. At the Church-door.

It is not good if it be made at a Caſtle or a Houſe door, but muſt be at the Church or Monaſtery door.

IV. After affiance.

An Aſſignment of *Dower ad oſtium Eccleſiæ* cannot be made before Marriage, for that before ſhe hath no title to have Dower.

This Aſſignment is good without Deed, becauſe he cannot make a Deed to his Wife.

V. Of ſome part of his Land.

*A*nciently it was held, that a Man could not have indowed his Wife *ad oſtium Eccleſiæ* of more then a third part, but of leſs he might: but

at this day he may indow her of as much as he list.

VI. And doth declare the quantity and certainty.

A Woman indowed *ad ostium Ecclesiæ* may enter without Assignment of any; and in all Cases where the certainty appeareth, the Wife may enter without Assignment.

2. *Dower ex assensu patris*; which is,

Where Father is seized of Tenements in Fee, and the Son and Heir apparent, when he is married, indoweth his Wife at the Church-door, of parcel of his Fathers Lands, with his Fathers assent, by Deed, and assignes the quantity of the parcels.

Where the Father is

I. Seized of Tenements in Fee.

Tenant for life of a Carve of Land, the reversion to the Father in Fee, the Son and Heir apparent of the Father indoweth his VVife of this Carve, by the assent of the Father; the

the Tenant for life dieth, the Husband dieth, the Reverſion was a Tenement in the Father, yet is this no good Aſſignment *ex aſſenſu patris*, becauſe the Father at the time of the aſſent, had but a Reverſion expectant upon a Freehold, whereof he could not have indowed his own Wife.

II. The Son and Heir apparent.

It muſt be ſuch a Son and Heir apparent, as muſt of neceſſity ſo continue. And therefore the youngeſt Son and Heir apparent in Burrough-Engliſh cannot indow his Wife *ex aſſenſu patris*, becauſe the Father may have a younger Son then he. So of Heirs in Gavel-kind, if the Heir apparent be within the age of one and twenty, yet the Aſſignment is good.

III. Indoweth his Wife.

Albeit the *I*nhabitance is in the Father, yet in reſpect and perpetual apparance of the Heir, the Heir apparent doth indow, and the Father doth but aſſent. And therefore if

the Father endoweth the Wife of his Son, that Indowment is void.

IV. At the church doo2.

It may be likewiſe at the Monaſtery door, but no where elſe, as is ſhewen of Dower *ad oſtium Eccleſiæ.*

V. Of parcel of his Fathers Lands.

He may in this, as in *Dower ad oſtium Eccleſiæ*, indow his Wife of what quantity he pleaſeth.

VI. With his Fathers aſſent.

An Indowment *ex aſſenſu fratris*, or *conſanguinei*, is not good becauſe there is no apparance of a conſtant and a perpetual Heir. But *ex aſſenſu matris* is as good as *ex aſſenſu patris*, becauſe there is the ſame conſtant appearance of the Heir.

VII. By Deed.

The Wife muſt have a Deed of the Father to prove her aſſent.

VIII. And aſſigns the quantity of the parce'ſ.

In this, as in *Dower ad oſtium Eccleſiæ*, the certainty muſt be expreſſed.

The Wife having the quantity aſſigned,

assigned, after the death of her Husband, shall enter, albeit the Father be alive.

These Dowers for the most part ensue the nature of Dower at the Common Law. And for these the Wife may have a Writ of Dower, albeit they be certain, as for the third part at the Common Law.

These Dowers are good, though the Wife, at the time of the death of her Husband, be within the age of nine years.

3 *Dower de la pluis beale*; which is,

Where one is seized of twenty Acres holden in Knights-service, and as many in Socage, taketh Wife, and hath Issue, and dies, his Son within age, and the Lord enters as Guardian, and the Wife brings a Writ of Dower against the Guardian in Chivalrie, he pleading, that the Wife is Guardian in Socage; it shall be adjudged by the Court, that the Wife indow her self of the fairest of

the Tenements which she hath, as Guardian in Socage, after the value of the third part, which she claims by her Writ.

I. Where one is seized of twenty Acres.

If the Guardian in Socage have not sufficient Assets in her hands, to the value of her Dower, she may retain what she hath in part, and recover against the Guardian in Chivalrie, for part, to make up a third part.

II. And the Lord enter.

The Lord is not possessed as a Guardian, against whom a Writ of Dower lieth, untill he doth enter.

III. And the Wife brings a Writ of Dower against the Guardian in Chivalrie.

This Writ whereby the Wife is to recover a Freehold, lieth against the Guardian in Chivalry, though he have but a Chattel; and not against the Heir, who is Tenant of the Freehold. And if the Guardian die, it shall be brought against his Executors.

IV. The

IV. The Guardian pleading.

He may plead this, or detinue, or eloigning of the body of the Ward; but he ſhall not plead detainment of Charters.

V. It ſhall be adjudged by the Court.

Without Judgement, Guardian in Locage cannot indow her ſelf.

VI. That the Wife indow her ſelf.

The Wife may take her Neighbours, and in their preſence indow her ſelf by Metes and bounds of the faireſt part of the Tenements holden in Socage, to have and to hold to her for term of life.

And under the Branches of theſe ſeveral Definitions, or rather Deſcriptions, our Student may reduce in ſhort Rules all the Caſes that he ſhall meet withal in the whole courſe of his reading touching this ſubject. Which Rules ſo collected, ſerve not only for the better knowledge of the Law, but for its uſe and practice. For the Law being

ing of ſuch extent, and of ſo many infinite numbers of Caſes, as cannot be comprehended by the capacity of Mans underſtanding, he muſt be furniſhed with ſuch Rules and Propoſitions, whereunto he may reſort for his Information in his Opinion, and be furniſhed with Authorities to maintain his opinion, and Clients Cauſe, in his courſe of Practice. Neither doth he deſerve the name of a Lawyer, who hath not collected Precepts and Concluſions, for the deciſion of preſent and future Controverſies.

Sr John Doderidge Eng. Law.

Neither in this out Students Common Place do I allow of tranſmitting the whole Caſe to its proper place, which is not only tedious and painful, but of little profit, and takes up more time then our Student can well ſpare. Certainly the moſt delightful way, and moſt profitable, is to reduce the whole Caſe to as ſhort a Propoſition, as words can bear, and ſo to refer it to its proper place, without troubling himſelf with the circumſtances, of the Perſons, Time, and

and Place, or any other mattter that is not eſſential to the concluſion drawn therefrom. And when parallel Caſes occur, one Rule ſerves; only let him add, for further Authority the Book and Page, by which means one may run over the whole courſe of the Law in a ſmall volume which he may with eaſe carry along with him when occaſion requires, without troubling himſelf with thoſe vaſt Volumes, only ſufficient to contain the Abridgement of all the particular Caſes, which is a labour of unſpeakable toyle, & wherein he ſhall never be free from confuſion. To adhere therefore and wholly to reſpect particular Caſes, without any obſervation of the Rules of the ſame, and to charge our Memory with infinite ſingularities, is utterly to confound the ſame, and to ingender in our ſelves that wrong Opinion, (that many have amiſſe entertained) that *there is nothing certain in our Law.* Short and refined Reaſons and Rules of long and perplexed Caſes, do through their foundneſs

ſatisfie

satisfie our judgement, through their brevity and shortness wonderfully delight the mind, through their pithiness they may be deemed incomparable treasure, yielding a great measure of Wit, wonderfully sharpning our Understanding; of infinite use in all Affairs, containing much worth in few words, no burthen to Memory, but once obtained are ever retained.

The next thing to be observed by our Student, is, Conference about those things that he reads and writes. Reading without hearing is dark and irksome; hearing without reading is slippery and uncertain; neither of them yield seasonable fruit, without conference. Students, saith Mr. *Fulbeck*, should not do amiss, if at certain times they meet amongst themselves, and do propose such things as they have heard or read, by that means to be assured of the opinion of others in those matters. By this means they may be brought better to understand those things, one perhaps seeing & giving

1. Fp. Coc. ad 1. rel.

Prepar. c. 5.

a

a Reaſon, which the other is not aware of; and if he miſapprehend a Point of Law, the other may inſtruct him therein. Hereby are they likewiſe brought more firmly to retain in Memory the things that they have read or heard.

Often conference and private debating of Points of Law, is of great advantage: for thereby is the Wit, the Memory, and the Tongue, very much furthered and holpen, and a Man is made more ready and bold for publick Matters; and the Truth, which is the mark of ſtudy, doth more eaſily appear. And when the Minde by long reading is fraught with many Thoughts, the Wit and the Underſtanding do clarifie and break up in the communicating and diſcourſing with another: he toſſeth his Thoughts more eaſily, and marſhalleth them more orderly, he ſeeth how they look when they are turn'd into words. Finally, he waxeth wiſer then himſelf, and getteth more by an hours diſcourſe, then a days reading. It was well ſaid by *Themiſticles*

miſtocles to the King of *Perſia*, That *Speech was like cloth of Arras opened and put abroad, whereby the Imagery doth appear in figures; whereas in Thoughts they be but as in a pack.* Nay of ſuch exceeding advantage it is, that a man (ſaith the Lord *Bacon*) had better relate himſelf to a Statue or Picture, then to ſuffer his Thoughts to paſſe in ſmother: for he learneth of himſelf, and bringeth his own Thoughts to light, and whetteth his Wit as againſt a ſtone, which it ſelf cuts not. *Continual poring on Books* (ſaith *Socrates*) *hurteth and weakneth the Memory very much*: affirming Conference to be of great uſe, of ſuch uſe, as *Euripides* doth not ſtick to ſay, that Conference and Converſe was the Mother of all Sciences and Arts. And it is true that *Socrates* ſaith, *Learning to be ſooner attained unto by the Ear in diſcourſe and hearing, then by the Eye in continual reading.* Therefore muſt our Student (as Mr. *Plowden* ſaith Comment was done by him) be preſent at all Mootes

De. aug. Scient.

Andromache.

Prolog. ad

Mootes and Readings, and to frequent all places in Court and Chancery, and to give diligent ear to the debating of Questions at Law, (by those especially that are of fame and credit in learning cheifly of Arguments and Judgments made and given in the Kings Courts upon Demurrers in Law, and to commit those things he hears, and the Judgment thereof to writing, and not to trust slippery Memory. And certainly this hearing of the Arguments made in the Courts of Judicature, are the best means of enlightning and increasing our Students knowledg in the Law: for what he finds briefly, and perhaps obscurely delivered in a Book, he hath there fully and clearly delivered at the Bar or Bench, and most commonly illustrated by confirming it with Presidents.

Another thing to be observed by our Student, is, Meditation. And (*Meditatio est frequens cogitatio, modum, & causam, & rationem unius cujusque rei investigans.*) [Meditation

tion is a frequent cogitation, searching into the manner, cause, and reason of every thing.] He must ruminate upon, and consider of those things that he reads, according to that of the Philosopher; *Excutiendus est animus, & quæcunque apud illum deposita sunt, subiende excutiendæ debent, ut parata sint quoties usus exegerit.* [Our Mind must be unfolded, and whatsoever is laid up there shaken now and then, that they may be ready as often as occasion requires.] Without this, our pains will little avail (saith the Lord *Cook*.) *Omnis perfectus ex lectione & meditatione procedit, quæ enim nescimus lectione discimus, quæ didicimus meditationibus conservamus.* [All Proficiency is from Reading and Meditation: for what we do not know, we learn by Reading, and what we learn, we retain by Meditations.] Our Reading keeps proportion with our Meats, which if it be swallowed whole, is rather a burden then nourishment. *Quod in corpore nostro videmus operari naturam,*

Seneca.

Ep. ad 1: relat.

am, alimenta quæ accepimus quamdiu in ſua qualitate perdurant, & ſolida natant ſtomacho, oneri ſunt; at cum ex eo quod erant mutata ſunt, tunc demum in vires & ſanguinem tranſeunt: Idem in illis quibus aluntur ingenia præſtemus, ut quæcunque hauſimus non patiamur integra eſſe, ne aliena ſint coquamus illa, alioquin in memoriam ibunt, non ingenium. [What we ſee nature doth in the body, the nouriſhments that we receive as long as they remain in their own quality, and ſwim whole on the ſtomack, they are a burden; but when they are changed from what they were, then do they turn to ſpirits & blood: The ſame we muſt do in thoſe things, wherewith the Underſtanding is nouriſhed, that whatſoever we have ſwallowed we ſuffer not to continue whole; we muſt concoct them, leſt they be none of ours, for elſe they paſſe into the Memory, but not into the Underſtanding.] They that read and write *curſim & properantes*, are like Pilgrims, who have many Hoſts and few Friends; read much

much, and understand little *Vitamin peregrinatione agentibus hoc evenit, ut multa hospitia habeant, nullas amicitias; idem accidit his qui omnia cursim & properantes transeunt.* That meat that is presently avoided, profits not *Non prodest cibus qui statim emittitur.* One Book well digested, is better then ten hastily slubbered over. Our Student therefore in reading must pick out some Point wherein he may meditate. *Quum multa percurreris unum excerpe quod concoquas.* And when that is sufficiently digested, he may fall to his reading again. *Certis ingeniis immorari & innutriri opportet, si velis aliquid trahere quod in animo fideliter sedant.*

Therefore after a Case read, let him consider with himself, and meditate in his mind, to what several purposes the same Case may be applied, and what matter the resolution of the said Case can confirm. And once meditating of a Point is not sufficient, but at his leisure he should call his Memory to account for those things committed to its charge

some

ome time before, and run it over gain, *Altius quotidiana meditatione gendum est.* For upon the reading of a thing, to commit it to Memory without any more ado, is not the way to fasten it so as to make it our own. Therefore I will conclude with *Seneca*: *Que didiceris affige tibi, ita ut excidere non possunt, non enim ut memoriæ tradidisti sacris.*

CHAP.

CHAP. V.

Of the Time and Place of Study.

THere is a time for every thing (saith the Wise man) and if so, there is a time for study too. Indeed every time is a time for Study. *Tempus quidem nullum est parum idoneum studio salutari.* [There is no time that is not fit for wholsome Studie.] Yet some time is fitter then an other, witness the old saying *Aurora musis amica.* For the Spirits of our Bodies, following the disposition of the Air, which in the morning at Sun-rising is subtill and thin, pure & free from all gross vapours and our Minds being of the same condition, are quick and nimble, the Pores of the Body opened, the Humours and Spirits inlarged, which maketh us more apt for Study. And being after rest, the Spirits are stronger to incounter with difficulty and weighty

weighty matters, and after ſleep the Memory is moiſtened with the vapours ariſing out of the Stomack, and ſo made fitter and better diſpoſed to receive the figures of the matter conceived and apprehended. Therefore our Student muſt make uſe of the beſt part of the day, the morning, called by the Phyſicians, *The golden hours.* And thoſe that change morning to evening, day to night, and fall to their Studies when others bid them adieu, thoſe Antipodes of Nature, that turn night into day, *Qui officia lucis noctisque pervertunt*, do very much miſtake their time. For in the night the Air is thickned and corrupted with contagious Exhalations, which poſſeſſing the Senses, do pierce into the brain, and make it cloudy and heavy. And the Spirits being ſpent and conſumed by our motions in the day; the Body is weak and unfit for any labour. And in the night the Body waxeth more dull, ſo that the mind cannot uſe it as a convenient Inſtrument. And late watchings weaken the

the vital Spirits, through too much intension, and exhauſt the native humility; which made *Ovid* ſay,

Attenuunt juvenum vigilatæ corpora noctes.

And *Seneca* ſaith, *Turpis eſt qui alios ſole ſemiſomnis jacet.* And the ſame Author gives *L. Piſo.* a check for this cuſtome. *Uſque in horam ſextam fere dormiebat, hoc erat ejus matutinum*: the like he doth with ſome others of the ſame practice, of whom he ſaith, *Nec ante deducunt oculos quam appetere noctem cæpit*; being with them as with the *Antipodes*, whoſe Sun-ſetting is our riſing: *Qualis eorum conditio dicitur, quos natura, ut ait Virgilius, pedibus noſtris ſubditos è contrario poſuit.*

Moſque ubi primus equis oriens afflavit anhelis,
Illic ſera rubens accendit Lumina

He muſt not ſtudy preſently after meat;

meat; *Non eſt* (ſaith *Seneca*) *quod poſt cibum ſtudeas*, being very hurtful and deſtructive to the body. For, ſaith *Leſſius*, the exerciſes and imployments of the mind do very much hinder and diſturb the concoction, and that either becauſe in calling up the whole force of the ſoul, they do as it were abate and ſuſpend the power and actions of the inferiour faculties, as experience ſheweth; for when we are very intent on ſtudy, we neither hear the clock, nor take notice of any thing that comes before our eyes and other ſenſes; or elſe becauſe they do withdraw, not onely the Animal but the Vital and Natural Spirits themſelves from their proper ſervices. And after meat thoſe vapours and fumes, which are cauſed by the meat taken down into the ſtomack, do clowd and overſhadow the clearneſs of the brain, and do offend and hinder the operations of the ſuperiour faculties, to wit, of the Senſes, the Imagination, the Underſtanding, and the Memory: ſo that he cannot

either with ſafety or profit ſtudy preſently after meat.

And as there are hours of the day for ſtudy, ſo there are alſo of the mind. Therefore muſt our Student practiſe all things at two times eſpecially; the one, when the mind is beſt; the other, when it is worſt diſpoſed: that by the one he may give a greater ſtep, by the other he may work out the knots and ſtones of the mind, and ſo make the middle time the more eaſie and pleaſant, to fix and cheriſh the good hours of the mind and to obliterate and take out the evil. And herein he muſt bear over to the contrary extreme, of that where unto he is by nature inclined. He muſt likewiſe conſider, that the mind is brought to any thing better, and with more ſweetneſs and proficience, if that whereunto he pretends be not firſt in the intention, but *tanquam aliud agendo*, becauſe of the natural hatred of the mind againſt neceſſity and conſtraint.

If our Student obſerve theſe Rules, he ſhall never think his ſtudy tedious,

tedious, but find it a remedy against all discontent, grief and melancholy whatsoever. Let him therefore wholly apply himself to the same, (*toto anima studore*, in *Seneca*'s phrase) and when once familiarity with, acquaints him with the advantages of study, he shall find such pleasure and content treasured therein, that none can conceive but they that enjoy them. Witness he that said, *Si quis familiariter studium amare didiscerit, & ei sæpius vocare ualuerit, jucundam valde reddit vitam.*

And although every time is fit for study, yet must it not therefore take up all our time. For it is true that *Lipsius* saith, *Ingenia vegetativa* must have *suos recessus*; lively Wits must have their retrait or intermission of exercise; and as Rams (Engines of War in the antient times) recoiled back to return with the greater force, so the mind doth unto Study after pause and rest. *Animum aliquando debemus relaxare, & quibusdam oblectamentis reficere.* We must sometimes loosen our minds, and with some delights Seneca.

or other refresh them. He must not be still poring on Books, for that makes him dull, and blunts the edge of the understanding. *Neq; ego te jubeo semper imminere libro aut pugillaribus, dandum & aliquod intervallum animo.* He must not sit till he can sit no longer, and have no other stage then weariness. *Sit ipsa lectio temperata, cui finem consilium, non lassitudo imponat.* And the ordering of Exercise is a matter of great consequence to hurt or help us in study. For it is well observ'd by *Cicero*, that men in exercising themselves in Recreations, if they be not well advised, exercise faults withall, and get ill habits as well as good; so as there is a great judgment to be had in the use, continuance, and intermission of exercises. Our Student therefore must use some moderate Recreations, such as do not require any long time, or labour the mind over much. *Exercitationes faciles & breves, quæ corpus & sine mora laxent, & tempori parcant.* [Recreations short and easie, which speedily refresh the body, and spare

Seneca.

Seneca.

ſpare time.] His exerciſe therefore on the one ſide muſt not be violent or laborious, for ſuch do more hurt then help the body, very much weaken the mind, and waſte the ſpirits. *Majore corporis ſarcina animus eliditur, & minus agilis eſt, & exercitationum labor ſpiritus exhaurit, & inhabilem intentioni & ſtudiis acrioribus reddit.* Seneca. Nor may they on the other ſide be looſe and effeminate, our mind muſt be onely unbent, not unſtrung; *Dandum intervallum animo, ita tamen ut non reſolvatur, ſed ut remittatur: Corpori nec nego indulgendum, ſervi-endum nego.* Such Recreations as require much labour, as Wreſtling, and the like, do not become *hominem literarum*, a learned man: *Stultum eſt enim, mi Lucilli, & minime conveniens literato viro occupatio exercendi lacertos, & dilatandi cervicem, ac latera firmandi.* Seneca. And the Lord *Bacon* ſaith, that ſuch exerciſes are hurtful to the body, when ſtrength is extended and ſtrained to the uttermoſt, as Dancing, Wreſtling, and ſuch like. For it is certain, that the ſpirits be-

Hiſt. of life and death. p. 220.

ing driven into ſtraits, either by the ſwiftneſs of the motion, or by the ſtraining of the forces, do afterwards become more eager and predatory. Nor do I ſpeak againſt a moderate ſtirring of the body: *Geſtatio & corpus concutit & ſtudio non officit, & mihi neceſſarium erat* (ſaith the ſame *Seneca*) *concutere corpus, ut ſi aliquo cauſa ſpiritus denſior erat, extenuaret illum jactatio, quam profuiſſe mihi ſenſi.* And the ſame Lord *Bacon* ſaith, That Exerciſes which ſtir up a good ſtrong motion, but not over-ſwift, or to our utmoſt ſtrength, as Shooting, Leaping, Riding, Bowling, and the like, do not hurt, but rather benefit. Seneca.

Recreations (ſaith *Canſin*) the moſt innocent are ever the moſt commendable; and if ſo, certainly Shooting, Bowling and Angling, are moſt worthy his exerciſe. The firſt is uſeful both in Peace and War, an honeſt paſtime for the mind, and a wholeſome exerciſe for the body. It provides meat for the ſtomach, and ſtomack for meat. It is the antienteſt of any

any, as antient as *Cain*, whom ſome ſay *Lamech* killed with a ſhaft. Anciently practiſed by Kings and Emperours, witneſs *Xenophon*, who ſaith, that *Cyaxares* King of the *Medes*, *Aſtyages* his ſon, *Cyrus* and *Darius*, were skilful in this Art; nay, the latter was ſo taken with it, that he cauſed to be ingraved on his Monument, that he was exquiſite in ſhooting. *Domitian* the Emperour was ſo cunning therein, that he would ſhoot betwixt a man's fingers ſtanding at a diſtance. It is a quiet and harmleſs Exerciſe, yet doth it well deſerve the name of Exerciſe, for it both increaſeth ſtrength, and moſt preſerveth health, being not violent, but moderate, not overlaying any one part with wearineſs, but equally exerciſing every part of the body. Shooting (ſaith the Lord *Bacon*) is good for the lungs and breaſt. In a word, it is the onely Recreation allowable in our Law; and being a lawful Recreation, is the moſt worthy of a Lawyer's practiſe.

Bowling (ſaith the ſame Lord *Bacon*)

can) is good for the Stone and Reins; and those that lead ſedentary lives, as Students do, are moſt ſubject to theſe diſeaſes; therefore doth in a manner enjoyn our Students exerciſe thereof, *periculo incumbente*. It is an inſtructor of the Mathematicks, an innocent Recreation, doth moderately refreſh the body, and very much quicken and ſharpen the underſtanding.

Angling, the laſt, but not the worſt of the three, is a Recreation, though tedious to ſome, yet full of pleaſure and delight to others; and this is of antient ſtanding too. Of its innocence there is no queſtion, our Saviour himſelf being often preſent when the Apoſtles uſed the ſame. And if you believe *Plutarch*, *Mark Anthony*, amidſt his wonderful glory, uſed Angling as a principal Recreation. So harmleſs a Recreation, that it is allowed to Clergy-men, being a Recreation that invites to Contemplation and quietneſs, and uſed by them accordingly: witneſs Doctor *Whittaker*, Mr. *Noel*, and Mr. *Perkins*.

kins: Sir *Henry Wotton* ſaith, That after tedious ſtudy, it was a reſt to his mind, a clearer of his ſpirits, a diverſion of ſadneſs, a calmer of unquiet thoughts, a moderator of paſſions, a procurer of contendedneſs, and it begets habits of peace and patience in thoſe that practiſe it. It is a Recreation that doth not at all take up the mind, but gives it liberty for any contemplation, therefore moſt befitting a Student; witneſs that Angler that ſaid,

My hand alone my work can do,
So I can fiſh and ſtudy too.

But let not Recreation get ſo much ground upon him, as to make him forget it is but a Recreation; let him not ſpend too much time therein, but after ſome ſhort while return to his ſtudy again, following *Seneca's* advice, who ſaith, *quicquid facies, cito redi à corpore ad animum; illum diebus ac noctibus exerce, labore modico alitur ille.* [Whatſoever thou doſt, make a ſpeedy return from the body

to

to the mind: exercise this day and night, for it is nourished with moderate labour, and refreshed with short recreations.]

Ad studium multum confert locus, saith *Seneca*: [The place is a great furtherance to study] therefore it will not be amiss to add somewhat concerning it. And that must be somewhere apart, where quiet and silence are not interrupted. *Necessarium est silentium ad studia sepositæ.* For where noise disturbs his busied thoughts, and puts him behind-hand with himself, he cannot expect any solid progress in his Studies, unless he be such as *Seneca* speaks of, *Cui mens inter clamatores tam varios, tam dissonos constat*; but *ad hoc tarde perventur*, this is hardly attained to, saith he, not till he be such a one as this *Seneca* wished this *Lucillius*: *Tunc te scito esse compositum, cum ad te nullus clamor pertinebit, cum te nulla vox tibi excutiet.* [Know thee then to be composed, when no noise belongs to thee, when no cry can shake thee out of thy self.] Whence may be con-

concluded, that Cities and places of confluence are offenſive to ſtudy, for the noiſes, cries, and tones that fill every corner, *Librarii varias exclamationes, & botularum & cruſtularium, & omnes popinarum inſtitores, merces ſuas quadam & inſignita modulatione vendentes*, will diſtract and confound his thoughts, and perhaps when moſt intent upon the moſt difficult buſineſs. This made Sir *John Forteſcue* commend the ſituation of the Innes of Courts, for, ſaith he, This place of Study is not ſituate within the City, *Ubi confluentium turba Studentium quietem perturbare poſſit.* And certainly the thick vapours compaſſing Cities, make the air about them dull and foggy, which muſt needs have a great influence upon the Brain, and conſequently the Underſtanding too. All which Inconveniences are avoided in the Country, where the air is ſharp and piercing, places quiet and ſilent, excellent walks, the comfort whereof, together with the fragrancy of the flowers and herbs, do much add to

and

De leg. l. 2. and ſupply the waſted ſpirits. *Cicero* was much taken with this, when he ſaid, *Illo loco libentiſſime ſoleo uti, ſive quid mecum ipſe cogito, ſive aliqui ſcribo, aut lego, hoc vero nihil eſt amœnius.*

MVSEVM BRITAN NICVM

FINIS.